

An Assessment and Recommendations for Preservation and Management of City-owned Agricultural Land

**Prepared for the City of Bainbridge Island
by American Farmland Trust with Cascade Harvest Coalition**




American Farmland Trust

January 2006

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American Farmland Trust is a national non-profit organization formed in 1980 that is dedicated to saving the land that sustains us by working to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. The Pacific Northwest Field Office of American Farmland Trust opened in 2000.

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Center: Map of Bainbridge Island, Kitsap County Department of Emergency Management Website

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Executive Summary

Bainbridge Island agriculture has a rich history that is evident in the community's cultural and social values. The City's comprehensive plan summarizes the variety of benefits and values associated with local agriculture through its goal to preserve and encourage agricultural activities "as a means of providing locally grown food, enhancing the cultural and economic diversity of the community and preserving open space and view corridors." Unfortunately, many of Bainbridge Island's farms have been lost to competing non-agricultural development over the past 50 years. As the citizens and public officials became aware of this farmland loss, and its consequences on local food sources, and the cultural and aesthetic nature of the community, there was a call for public action. In response, the City of Bainbridge Island acquired fee ownership of six agricultural properties through general revenue, Open Space bond dollars, and donation. The city has an ultimate goal of preserving 1% of the island (approximately 180 acres), for permanent use as productive farmland.

In 2005, the City of Bainbridge Island contracted American Farmland Trust and Cascade Harvest Coalition to conduct an assessment of the city-owned agricultural properties and develop recommendations on management and program activities to support Island agriculture and other varied public purposes. Through stakeholder interviews with over 20 public officials, agency personnel, organization representatives, farmers and interested citizens, and comprehensive analysis of documents including the Bainbridge Island Comprehensive Plan, land use regulations and policies, public survey and opinion information, Open Space Commission documents, and additional documents from several relevant agencies and organizations, AFT and CHC identified four goals for the management of city-owned agricultural properties:

Primary Goal:

- Support for and promotion of the Bainbridge Island agricultural industry

Secondary Goals:

- Conservation and protection of sensitive natural resources
- Preservation of landscape for cultural, historical and aesthetic values
- Creation and access to public education and recreation opportunities

AFT and CHC then researched various management models and systems to support agriculture and developed a comprehensive analysis with case examples to illustrate advantages and disadvantages of each. Three primary management models were reviewed: 1) Fee-simple acquisition with retained ownership, 2) Fee-simple acquisition with subsequent sale subject to easement, and 3) Easement acquisition. Policies and programs to support agriculture were discussed for three areas: 1) Land use planning and regulations, 2) Protection of additional land, and 3) Strengthening the agricultural industry. A review of these models and systems are presented in the study and supported by case examples from other state and local farmland protection efforts provided in the appendices.

Based on the four management goals stated above and the review of management models and other systems to support agriculture, the study supports the following recommendations for the City of Bainbridge Island:

Management of Protected Agricultural Properties

Ownership and legal status of properties

- 1: The City of Bainbridge Island should retain fee-simple ownership of the six agricultural properties that it currently owns.
- 2a: All agricultural properties held by the City of Bainbridge Island should be subject to an agricultural easement or conservation easement that prohibits future development of the property for non-agricultural uses and promotes or requires agricultural use.
- 2b: All conservation and/or agricultural easements should be held by a qualified independent third party, such as a land trust, for monitoring and enforcement.
- 2c: The City of Bainbridge Island should create or contribute toward a stewardship fund to assist with easement monitoring and enforcement costs.

Uses and management of specific city-owned agricultural properties

- 3: The City of Bainbridge Island, or a contracted third party, should develop comprehensive present condition reports for all six properties that give detailed descriptions of each property's physical features, including soil composition, natural elements, and structure sites.
- 4a: The City of Bainbridge Island should consider the following comments and recommended uses for the *Johnson Farm*: (see Section IV: Recommendations).
- 4b: The City of Bainbridge Island should consider the following comments and recommended uses for the *Morales Farm*: (see Section IV: Recommendations).
- 4c: The City of Bainbridge Island should consider the following comments and recommended uses for the *M&E Farm*: (see Section IV: Recommendations).
- 4d: The City of Bainbridge Island should consider the following comments and recommended uses for the *Suyematsu, Bentryn and Crawford Farms*: (see Section IV: Recommendations).

Partnerships for Management

- 5a: The City of Bainbridge Island should partner with the Bainbridge Island Metro Parks and Recreation District (The District) for the management of any property for which production agriculture is not a primary purpose.
- 5b: The City of Bainbridge Island should partner with the Bainbridge Island Land Trust (BILT) to hold and monitor agricultural conservation easements on the six properties.
- 5c: The City of Bainbridge Island should partner with the Trust for Working Landscapes for the management of all properties for which production agriculture is a primary purpose.

Environmental stewardship

- 6a: An individual Farm Conservation Plan should be developed for each property by the Kitsap Conservation District.
- 6b: If there are any particular resources on a farm that require greater protection and less impact, then a conservation easement should be put into place to protect that portion of land from any future use.

Administration and financing of management activities

- 7a: If the City of Bainbridge Island plans to retain ownership and primary management responsibilities over the properties, the City should create at least one full-time City employee position dedicated to the administration and management of the properties.
- 7b: If the City of Bainbridge Island plans to transfer management responsibilities to a third party, the City should designate at least one part-time (50% equivalent) city employee position dedicated to the coordination of third party partnerships and the oversight of any administration and management that remain in the City's purview.
- 8a: In the short-term, the City of Bainbridge Island should finance administration and management expenses through general revenue allocations.
- 8b: In the long-term, the City of Bainbridge Island should explore additional public and private sources of funding for the administration and management of the protected properties.
- 9: The City of Bainbridge Island should support the fundraising and capacity-building efforts of any organizations with whom it partners.
- 10: Any future bond or tax initiative to support open space and farmland acquisition should include an earmarked portion for the continued stewardship of those properties.
- 11: The City of Bainbridge Island should invest in public relations efforts to increase awareness of the use and goals of the protected agricultural properties.

Systems to Support Protected Agricultural Properties

- 12: The City of Bainbridge Island should create a standing Agricultural Advisory Committee to conduct a comprehensive review of city policies and programs that impact agriculture and make recommendations to the City Council and Mayor's Office on changes to make city policies and programs more amenable to agricultural operations on Bainbridge Island.

Land Use Planning and Regulation

- 13: The City of Bainbridge Island should create a voluntary agricultural zoning district that discourages non-agricultural uses.
- 14: The City of Bainbridge Island should continue to encourage the use of cluster zoning. Cluster development should be required for any residential development on parcels adjacent to protected farms or properties that are zoned for agriculture.

- 15: The City of Bainbridge Island should create a farmland mitigation program to ensure that the destruction of farmland is mitigated by the preservation of farmland elsewhere on the island.
- 16: The City of Bainbridge Island should conduct a thorough evaluation of its TDR ordinance and make appropriate changes to make the ordinance more meaningful for use on Bainbridge Island.

Protection of additional land

- 17: The City of Bainbridge Island should put forth another bond initiative, or new tax increase, to support the acquisition of additional farmland and open space.
- 18: In the future, The City of Bainbridge Island should pursue easement acquisition from agricultural properties on which there is a current farmer interested in continuing farming.
- 19: The City of Bainbridge Island should consider other land use tools and programs, such as the farmland mitigation and TDR or DTC programs, which could be used to protect additional agricultural lands.
- 20: The City of Bainbridge Island should develop and promote a planned giving program for farmland and open space that would include tax benefits and a retained life estate for the landowner.

Strengthening the agricultural industry

- 21: The City of Bainbridge Island should consider property tax valuation methods to help keep farming viable on easement-protected or agriculturally-zoned properties.
- 22: The City of Bainbridge Island should continue to uphold its Right-to-Farm ordinance.
- 23: The City of Bainbridge Island should support, and wherever possible, create new direct marketing opportunities for Island-grown producers.
- 24: The City of Bainbridge Island should provide incentives to attract and retain agricultural support services that strengthen the infrastructure for Island-grown producers.
- 25: The City of Bainbridge Island should foster and encourage the development of a Buy-It-On-Bainbridge Program to strengthen distribution opportunities of Island-grown producers and increase local awareness and pride in a strong local food source.

In conclusion, the City of Bainbridge Island should form a committee, possibly the same Agricultural Advisory Committee suggested in Recommendation #12, to develop an implementation action plan for the recommendations in this report. The plan should include substantial public input, possibly in the form of a public meeting series around the Island. The City of Bainbridge Island should work with the Committee as well as other partners across the island to implement the strategies, policies and programs necessary to realize the City's desire to support the island's agricultural industry. Proper management of the protected properties, together with investment in systems to support island agriculture more broadly, can rejuvenate and strengthen the Island's agricultural industry and farming community, making available the many benefits of a strong agricultural base and local food source to future generations on Bainbridge Island.

Section I: *Introduction*

Protection of Agriculture on Bainbridge Island

Bainbridge Island agriculture has a rich history that is evident in the community's cultural and social values. Regular events, such as the Strawberry Festival and Harvest Fair, pay homage to this agricultural heritage, and the popularity of the Bainbridge Island Farmers Market demonstrates citizens' desire for a local food source. The aesthetic value of farmland, particularly the small acre fruit and vegetable operations strewn across the island's landscape, resonates with residents, as evidenced by the strong support in the 2000 Community Values Survey to preserve agricultural lands and viewsheds. The City's comprehensive plan summarizes the variety of benefits and values associated with local agriculture through its goal to preserve and encourage agricultural activities "as a means of providing locally grown food, enhancing the cultural and economic diversity of the community and preserving open space and view corridors."



Suyematsu Pumpkin Farm
Credit: Gerard Bentryn

Many of the strawberry fields that once covered the hillsides of Bainbridge Island have, however, been lost to competing non-agricultural development over the past 50 years. As the population increases and land values rise, these competing land use pressures are likely to continue, making farming on Bainbridge Island a challenging enterprise. High land values and lack of affordable housing make owning and operating a farm cost-prohibitive for many farmers. Furthermore, as farms have disappeared, so have many of the processing facilities and other agricultural infrastructure supports that are vital to a strong farming industry. According to the Bainbridge Island Comprehensive Plan, only 38 parcels totaling 222 acres were classified as agriculture for tax purposes in 2004. Although the number of actual operating farms is probably higher (due to the fact that many small scale operations may not qualify for tax status), the true number pales in comparison to the thousands of acres that were once in agricultural production.



Aerial View of Day Road Farms
Credit: Gerard Bentryn

As the citizens and public officials became aware of this farmland loss, and its consequences on local food sources, and the cultural and aesthetic nature of the community, there was a call for public action. In response, the City of Bainbridge Island purchased the Johnson and Suyematsu Farms with general funds in 2000 and 2001, respectively. In November 2001, Bainbridge Island voters supported an \$8 million bond initiative for "acquiring or otherwise preserving forested areas, open space, wildlife

habitat, farms and agricultural lands and creating new trails and passive parks." Over the following two years, the city's Open Space Advisory Commission acquired the Morales, Bentryn and Crawford properties using Open Space bond dollars. In addition, the city received a donation of the M&E Tree farm, bringing the total city-owned agricultural inventory to six properties totaling over 65 acres. The city has an ultimate goal of preserving 1% of the island (approximately 180 acres), for permanent use as productive farmland.

Purpose and Process of the Present Study and Report

In 2005, the Bainbridge Island City Council issued an RFP to create an *Assessment and Recommendations for Preservation and Management of City owned Agricultural Land*. American Farmland Trust (AFT) responded to the RFP with a proposal to conduct stakeholder interviews and analyze relevant documents in order to provide recommendations that speak to the following:

- An analysis of key public benefits and public values;
- Analysis of systems to secure the land for the long-term future; and
- Identification of potential financial resources

To that end, AFT, with the assistance of Cascade Harvest Coalition (CHC), interviewed over 20 public officials, agency personnel, organization representatives, farmers and interested citizens, and conducted comprehensive analysis of documents including the Bainbridge Island Comprehensive Plan, land use regulations and policies, public survey and opinion information, Open Space Commission documents, and additional documents from several relevant agencies and organizations, to inform the development of overarching goals for the preservation and management of city-owned agricultural properties. Based on those goals, AFT researched management models and implementation strategies from around the country and developed a comprehensive written review of those management options for Bainbridge Island. Finally, AFT and CHC developed recommendations to help Bainbridge Island realize the identified goals for the protected agricultural properties through management activities and public policy.

Layout of Report

This report proceeds in the following sections:

Section II: *Analysis of Key Public Benefits and Public Values* provides evidence from stakeholder interviews and document review for the identification of overarching goals for the preservation and management of city-owned agricultural properties. These goals reflect the public values of Bainbridge Island residents and public officials and seek to maximize public benefits from the management of these lands. The goals serve as the foundation that guides the research on management models and strategies in Section III and the recommendations in Section IV.

Section III: *Systems to Secure the Land for the Long-term Future* provides a comprehensive review of management models and strategies based on case examples from several state and local farmland preservation programs from around the country. Consideration is also given to the administrative burden of program management and possible funding strategies to support management activities. In addition to models for the management of specific protected parcels, the section also discusses systems that may support protected agricultural lands, including land use planning and regulation, protection of additional lands, and strengthening the agricultural infrastructure. The section is heavily supported by numerous documents found in the appendices.

Section IV: *Recommendations* considers the information in Section III in light of the overall goals identified in Section II in order to develop specific recommended actions for the management and support of the city-owned agricultural properties. Recommendations include legal ownership issues, management tasks and responsibilities, partnerships with other agencies and organizations, improving land use tools, and promoting the agricultural industry on Bainbridge Island. Narratives are provided to offer explanations and evidence to support each recommendation.

Finally, Section V: *Conclusions* closes the report by offering some closing thoughts and immediate next steps to implement the recommendations found herein.

Section II: *Analysis of Key Public Benefits and Public Values*

The 2000 Bainbridge Island Community Values Survey clearly indicated support for the preservation of agricultural lands (92% support) and environmentally sensitive areas (90% support), and served as the basis for the \$8 million Open Space Bond initiative passed in 2001. Although these two items were the highest and second highest ranking growth management issues on the survey, the survey does not delve into the reasons (i.e. public benefits and public values) behind the strong support. This section provides evidence from stakeholder interviews and document review on the motivations for agricultural land preservation on Bainbridge Island, and uses those findings to develop priorities for the future management of protected farmland. The four goals, described below, serve as the basis for the discussion of management models and other systems to support protected farmland in Section III, and are the chief assumptions supporting the recommendations in Section IV.

Primary Goal:

- Support for and promotion of the Bainbridge Island agricultural industry

Secondary Goals:

- Conservation and protection of sensitive natural resources
- Preservation of landscape for cultural, historical and aesthetic values
- Creation and access to public education and recreation opportunities

It is important to note that these goals exist for the overall management of all city-owned agricultural land. It may be neither desirable nor appropriate to meet all four goals on each property; rather some properties may be more suitable for practices that meet one or two of the goals, while other properties may be good fits for the other goals.

Primary goal: Support and promotion of Bainbridge Island agricultural industry

Interviews with several current and past city employees and public officials, as well as document analysis of materials pertaining to the protected properties, very clearly indicated that the primary goal of protecting these agricultural properties is to support and promote the agricultural industry on Bainbridge Island. Interviewees stated that they are less interested in encouraging hobby-farming or P-Patch operations (although it could be considered as a potential use that would be compatible with production agriculture on the protected properties) and more interested in providing a land resource for farmers who are sincerely contributing to a sustainable local food source on Bainbridge Island. City officials also made clear that the uses of these properties should not be counter to this primary goal. As such, several officials stated that the properties should not be viewed as tourist attractions, and that recreational opportunities and public



***Suyematsu & Bentryn Farms in Fall
Credit: Gerard Bentryn***

access should only be permitted so long as they do not interfere with the agricultural operations taking place on the properties.

In its comprehensive plan and zoning code the City of Bainbridge Island clearly states its support for agriculture and its intent to create a supportive operating environment for farms. Key goals of the Comprehensive Plan include preserving and encouraging agricultural activities “as a means of providing locally grown food, enhancing the cultural and economic diversity of the community and preserving open space and view corridors.” The Land Use Element of the Comprehensive Plan specifically calls for shifting density from critical areas and farmland to Winslow through a PDR/TDR program, open space tax incentives, cluster development, PUDs, conservation easements and other public and private techniques. The plan includes policies aimed at limiting the impact of new development through site planning and design and to mitigate conflicts between farmers and non-farm neighbors through the right to farm ordinance.

Meetings with members of the farming community and agriculture-related organizations also supported this primary goal. The farming community on Bainbridge Island is a small and dedicated group, but there is clearly interest among farmers to expand operations on the Island. Primary limiting factors for these farmers have been high land values and lack of affordable housing. The existence of the protected agricultural lands—as both a land resource and potential affordable housing opportunity for Island farmers—should do much to overcome these factors and help bolster the agricultural industry.

Secondary Goal: Conservation and protection of sensitive natural resources



*Pond at Johnson Farm
Credit: Rik Langendoen*

A secondary goal for the preservation of agricultural lands on Bainbridge Island is the conservation and protection of sensitive natural resources. Interviews and public survey results clearly indicated a strong environmental ethic among Bainbridge Island residents, particularly in the areas of protection of salmon habitat and old- and second-growth forest stands. Accordingly any permitted uses of the protected agricultural properties should be consistent with best management practices to ensure the protection of these natural resources.

Secondary Goal: Preservation of landscape for cultural, historical and aesthetic values

Interviewees emphasized the importance of the cultural and historical aspects of agricultural production on Bainbridge Island, particularly the strong history of berry farming and the significant roles of Japanese and Filipino immigrants in the agricultural industry of the Island. The Open Space Commission considers the historic use of the farm as one of its selection

criteria. Interviews with city officials clearly supported the goal of preserving and acknowledging these cultural and historical values whenever possible. In addition, these lands are valued by the city and its residents for their aesthetic value, making preservation of scenic agricultural viewsheds a priority for management of the properties.

Secondary Goal: Creation of public education and recreation opportunities

Finally, the goal of creating public education and recreational opportunities emerged as a goal of management of the agricultural properties. Interviewees indicated that education opportunities should include exposure to the cultural and historical value of agriculture on Bainbridge Island, as well as provide opportunities for residents to learn about agriculture and the food production process. City officials and interviewed farmers supported the possible creation of a recreational multi-use trail on the Johnson property, and other properties only where appropriate, and in such a manner so that such uses do not interfere with the agricultural production taking place on the properties.



***Community Event at the Johnson Farm Credit:
Jule Meyer***

Section III: *Systems to Secure the Land for the Long-term Future*

Management Models for Protected Agricultural Properties

The appropriate selection and implementation of a management regime largely determines the degree to which the public purposes and values for which a property was protected are indeed realized. This section examines the three primary management models that have been used by other state and local farmland protection programs across the United States: 1) *fee simple acquisition with retained ownership*, 2) *fee simple acquisition with subsequent sale subject to easement*, and 3) *easement acquisition*. The discussion of each model includes strategies for acquisition, ownership and management of the land, as well as overall strengths and drawbacks to the model. Following the description of the three models is a discussion of particular issues for the application of these models to the City of Bainbridge Island.

It is important to note that many state and local farmland preservation programs employ a mixture of these three options, giving them the flexibility to use the approach most appropriate for a particular situation.

The following table summarizes the strengths and weaknesses of the three management models that are presented in greater detail below.

	Model 1: <i>Fee-simple acquisition w/ retained ownership</i>	Model 2: <i>Fee-simple acquisition w/ subsequent sale subject to easement</i>	Model 3: <i>Easement acquisition</i>
Main Strengths:			
Relatively inexpensive			X
Maintain control over use	X		
Income from leases / housing	X		
Land sales generate revenue		X	
Can act quickly when property comes on market	X	X	
Can work with variety of landowners	X	X	
Land stays on tax rolls		X	X
Matching dollars available		X	X
Promotes private stewardship/investment		X	X
Main Weaknesses:			
Relatively expensive	X		
Maintain less control over use		X	X
Burden of farm management and property administration	X		
Risk that land will go idle	X		
Liability risk	X		

Model 1: Fee-simple acquisition with retained ownership

In this model, the program acquires agricultural land in fee from a willing seller. The program, or rather the political subdivision that runs the program, retains fee simple ownership of the property and carries out management of the property internally or through a contracted third-party, such as another governmental entity or a non-governmental organization. Typically the land is then leased to a farmer for the purpose of keeping the land in production agriculture.

For example, in Appendix A, we see the case of Boulder County, Colorado. Their Parks and Open Space Department oversees the management of 55,000 acres of land held in fee by the county, 24,000 acres of which is managed for active agriculture use. The department currently manages 120 leases with 75 tenant farmers, and maintains a lengthy wait-list for future leases. The department staff includes 85 full-time employees, 2 part-time employees, 12 extension service staff members, 30 seasonal employees, and hundreds of volunteers. Land acquisition and program administration has been funded through annual appropriations, sales and use taxes, and recycling and composting taxes—all of which has been used to back the issuance of over \$280 million in bonds. In addition, the program has received state matching dollars. See Appendix A for detailed information on the Boulder County Parks and Open Space programs.

On a much smaller scale, the King County, Washington Farmland Preservation Program also uses fee-simple acquisition to protect land, although its preferred method of preservation is easement acquisition. Although most lands are resold subject to easement, the program is permitted to lease the land for production agriculture or make the land available for open space uses with public access. The county has acquired four agricultural properties totaling 172 acres. They have retained ownership of 77 acres, 32 acres of which is being leased to a farmer on a five-year term. Twenty additional acres will be sold in 2006. The program is overseen by a staff of 1.5 full-time equivalent employees and is housed by the county's Department of Natural Resources. Funding for the fee simple acquisition program comes from a portion of \$50 million in general obligation bonds that were authorized in 1979. See Appendix B for additional information on the King County farmland preservation program.

Strengths of Model 1

There are several strengths to having the authority and funds for fee simple land acquisition. Such acquisition gives the program the ability to act quickly when a property of particular interest comes on the market. It also allows the program to work with landowners who may not be interested or willing to sell a lesser interest in their property, such as an agricultural or conservation easement.

If the program retains ownership of the property, as in the Boulder County case, then the program has complete control over the purposes for which the property is managed. This is particularly important if the purpose of the acquisition was to serve specific and/or multiple purposes. For example, in the Boulder County case, the Parks and Open Space department operates an educational center with interpretive displays and guided tours on one of the farms.

It would be more difficult to ensure the educational use of the property if it did not remain in public ownership. In addition, because the county owns and manages the agricultural land in production, they are able to control the scale and nature of agriculture on the properties. Interested tenants must complete a bid packet that includes their intended agricultural use of the land, and the county can determine whether or not that use meets their management goals.

Retaining ownership of the property also gives the program the ability to ensure that the land remains in production agriculture. In the case of Boulder County, program administrators express that the land values are so high that farmers can not afford to purchase easement protected properties, and that if county agricultural lands were to be sold to the public, “horse people” would easily out-bid those intending to use the land for production. By keeping the land in county ownership, the Parks and Open Space department can ensure that land remains available and affordable to the agricultural community.

Finally, the leasing and management of properties—both for housing as well as agricultural production—may generate income that can support the administration of the program and future land acquisitions. The Boulder County farm leases (the majority of which are three-year crop-share leases) generate an average of \$700,000 per year that is placed back into the agricultural division of the Parks and Open Space department.

Weaknesses of Model 1

There are several drawbacks to fee simple acquisition and to retained ownership and management of agricultural lands. Fee-simple acquisition is very expensive compared to other methods of land preservation, namely easement acquisition, and requires substantial upfront capital and an ongoing revenue stream for future land acquisitions. Land held in fee no longer generates tax revenue because it is typically removed from the tax rolls. In addition, as cited in the New Jersey example in Appendix C, fee-simple acquisition may give the false impression that the government is in competition with farmers for land.

A primary problem with retained ownership of agricultural land is that unless an easement is put in place and held by an independent third-party to ensure that the land is not developed perpetuity, then the land is not truly protected. For example, in 2003, Warren County, Pennsylvania acquired fee-simple ownership of a state-owned parcel of land. The land had a state-decreed deed restriction in place to limit its use to agriculture. However, political and economic conditions had changed since the original state acquisition of the property, and the county was able to negotiate the removal of the deed restriction as part of the transfer of title to the county. The county then sold the property to Wal-Mart for the construction of a new store. Although Wal-Mart mitigated the loss of the farmland by preserving land elsewhere, the original purpose of the agricultural parcel was not upheld because neither the state nor the county had placed a formal easement on the property to limit its future use. [See Appendix D for information on this case.]

Retained ownership may also result in the land remaining idle for periods of time. For example, the King County Farmland Preservation Program acquired 57 acres of agricultural lands that subsequently remained idle. The land is currently being considered for open space

purposes, although the original intention of the land was to retain its agricultural use by reselling it to a farmer subject to easement. Because the county, which has additional goals that compete with agricultural preservation, retained ownership in the land without an easement in place, the land is now unlikely to be placed back in agricultural production.

The importance of easements can not be overemphasized. Although governmental jurisdictions may be able to control the present use of property through land use regulations, zoning is subject to change as political will shifts. The only way to ensure that the original purposes of the land acquisition are honored in the future is to place an easement on the property limiting its future use to agriculture, and turning over the easement and monitoring responsibilities to an independent third party, such as a land trust.

An additional drawback to retaining ownership of agricultural land is the strong evidence from other programs that farmers would rather own land than lease land. As is cited in the New Jersey case in Appendix C, farmer ownership of land is believed to lead to better environmental stewardship of the land. Furthermore, farmers are more likely to make investments in their farmland operations and improvements to the land if they own the land. These effects could be mitigated by offering long-term (20 years or more) renewable leases to farmers so that they are confident that they will see the benefits of their investments on the property.

Retained ownership of land also leaves the title owner subject to liability. This is of particular importance if there are structures or equipment on the property which are not being properly maintained and if the property is adjacent or near to public access points.

By retaining ownership of a property, the governmental jurisdiction is not able to realize the cash value of the agricultural value of the property. Although lease payments or crop-share agreements may make modest contributions to the administration of a program, the amount is typically not significant unless done on a large scale similar to Boulder County. Selling the land subject to easement, while still far less than the full market value for development, will make a far greater contribution towards program administration and future land acquisition.

Finally, a major drawback to retained ownership is the administrative burden of farm management. While Boulder County Parks and Open Space department has made considerable investment to hire staff to specialize in agricultural management, most jurisdictions do not have the expertise or desire to manage agricultural lands. The alternative choice is to lease out the management responsibilities to a qualified third-party organization. Leasing to a for-profit farm management company can be expensive, and few qualified non-profit options exist in most areas.

Model 2: Fee-simple acquisition with subsequent sale subject to easement

While fee simple acquisition with retained ownership has been a primary management strategy for the Boulder County program, most other state and local programs use fee simple acquisition as a way to quickly attain properties, and then turn those properties over to private ownership as quickly as possible. In such cases, fee simple acquisition is viewed as a quick

and efficient means to acquire keystone properties that come on the market or properties whose owners are not interested in continuing farming the property and are therefore unwilling to sell a lesser interest in the property. The program typically places an agricultural easement or conservation easement on the property and then resells the land, subject to easement, to a willing buyer. The intention of these programs is not to retain ownership or control of the properties, but to encourage private agricultural land retention with permanent use restrictions in place.

For example, the New Jersey fee simple acquisition program (see Appendix C), in place since 1988, acquires agricultural land in fee when easement purchase is not an option. To date, the program has purchased 52 properties in fee totaling 8827 acres. The program seeks to resell the properties, subject to easement, as soon as possible. Properties are typically sold at public auction within six months of the original purchase. The State Agricultural Development Committee (SADC) administers the fee simple acquisition program along with the easement purchase program. SADC employs 24 fulltime equivalent and three part-time equivalent staff people, with a fee simple acquisition program dedicated staff of three fulltime equivalent staff. The fee simple acquisition program receives funding from a percentage of state bond monies consistently passed by voters since the early 1980s. See Appendix C for detailed information on the New Jersey fee acquisition program.

The King County, Washington program also employs this model (see Appendix B). While the program has retained ownership of a small handful of properties, their preferred method is to resell acquired land as soon as possible subject to permanent use restrictions. Of its four fee acquisitions to date, totaling 172 acres, 95 acres have been resold with restrictions at public auction. Twenty additional acres will be sold in 2006. The program is overseen by a staff of 1.5 full-time equivalent employees and is housed by the county's Department of Natural Resources. Funding for the fee simple acquisition program comes from a portion of \$50 million in general obligation bonds that were authorized in 1979. See Appendix B for additional information on the King County farmland preservation program.

Strengths of Model 2

Fee acquisition with subsequent sale subject to easement is a useful strategy when critical or keystone properties come on the market that require quick action, and when the ultimate goal is not to retain ownership and control of the agricultural properties. The strategy is also useful when negotiating land deals with owners who are no longer interested in farming the property, and for whom selling a lesser interest in the land (such as an easement) would not be desirable. The strategy allows for quick action on such properties, but returns the land to private ownership as soon as possible in order to minimize the expenses associated with land ownership and management, make land available for private agricultural production and stewardship, and capitalize on the agricultural value of the land through sale (the proceeds of which may contribute towards future acquisitions).

By selling the land subject to easement, the program removes the non-agricultural development potential of the land, thereby typically reducing its value by a considerable amount. The reduction in land value may ensure that agricultural land remains affordable and

available for future farmers. Keeping land affordable to the farming community is cited as a primary benefit of dozens of state and local farmland preservation programs (many of which are exclusively easement acquisition programs) around the country. Furthermore, the easement ensures that the land remains in agriculture in perpetuity, following the terms of the easement.

Returning the land to private agricultural production is viewed as a benefit for several reasons. The land remains on the tax rolls, generating tax revenue for the local community. There is also evidence and a strong belief among program administrators that farmers who own, rather than lease, their land will be more likely to invest in their agricultural operations and will be better stewards of the land, thereby strengthening the overall agricultural industry and improving the environmental integrity of the land. There is evidence however that similar investment and stewardship could be encouraged in a lease situation if the lease ensured use of the land for the long term (i.e. more than the standard one-, three- or five-year lease) or if the program administrators have established sufficient trust with the farming community that leases will be managed in a fair and equitable manner (as has been the case in the Boulder County case, which employs three-year leases).

A final advantage of Model 2 is that sale of the land generates revenue which can support the administrative costs of the program and/or may contribute to the future acquisition of additional lands. As both program administration costs and additional land acquisition (in fee or easement) can be high, it can be very meaningful for programs to ‘cash in’ on the agricultural value of the land by selling it to a private landowner.

Weaknesses of Model 2

As with Model 1, the expense associated with fee simple land acquisition is the primary disadvantage of Model 2. Fee simple acquisition requires substantial up-front capital, and a high level of sustained funding for future land acquisitions. However many of the other weaknesses of Model 1, including loss of tax revenue and the administrative burden of farm management, are not a factor in Model 2 because the land is returned to private ownership and protected by an easement limiting (or prohibiting) future non-agricultural uses.

An additional weakness of Model 2 is that the program does not retain control over the land, although its uses can be somewhat controlled through the easement language. This weakness is a concern if a main goal of the program is to allow the land to serve specific or multiple purposes, such as agricultural production and public education. Allowing public access to private land can be arranged through a lease agreement, but long term agreements would be difficult to administer and enforce because the land is in private ownership, and could subsequently change title ownership.

Furthermore, under Model 2 the program would have little control over the specific agricultural use of the land, unless the easement limits the use to a particular kind of agriculture. For example, if a goal of the program is to retain the land in small-scale crop production rather than pasture land, then retaining ownership of the property may be desirable. Some programs have overcome this concern by including a right-of-first-refusal

agreement into the sale of any property so that the program can choose to re-purchase the property if it goes to market again. The advantage of such an agreement is that it allows the program to review, and approve or disapprove, any other potential buyers of the property. Some programs have required that other potential buyers submit business plans to demonstrate how they intend to use the property. The major drawback to the right-of-first-refusal agreement is the program needs to be prepared, if necessary, to actually purchase the land, and must have the capital to do so.

Model 3: Easement acquisition

Most local and state farmland preservation programs in the United States are easement acquisition programs in which the program acquires a less-than-title interest in the property through the purchase of an easement to limit the future use of the land. Such programs, many of which are competitive in nature, typically solicit applications for easement purchase from willing landowners. Applications are considered based on numerous criteria, which may include soil type, current agricultural use, size and location, and proximity to other protected properties. Selected recipients receive a dollar amount roughly equal to the difference between the market value and the agricultural value of the property, although many programs include additional criteria that may increase or decrease the easement appraisal amount based on the desirability of the property and other factors.

In easement acquisition programs, the original owner retains title of the land along with most of the rights that title ownership carries, including the right to rent, sell, and bequeath the property. The farmland preservation program holds the easement, which typically extinguishes in perpetuity the right to develop the property for any non-agricultural purpose. Other provisions may also be included in the easement, such as limitations on specific agricultural uses or a roll-over clause that allows the property to revert to open space if agriculture becomes no longer viable on the property. The farmland preservation program, or a contracted or assigned third party, if applicable, is responsible for the regular monitoring of the easement and enforcement of its provisions if a violation occurs.

Appendix E and Appendix F consist of fact sheets describing the current status of local and state, respectively, purchase of agricultural conservation easement (PACE) programs. The fact sheets include information on date of inception, total acres protected to date, and sources of funding for each program. In general, there are five different sources of funding that are typically used for PACE programs: general obligations bonds, taxes (sales, property, and real estate transfer taxes), annual appropriations, federal funding, and other creative or locally-specific sources of funding. Appendix G is a fact sheet on these sources of funding. In addition, the state of Washington recently added a PACE program to its Washington Wildlife and Recreation Program administered by the Interagency Committee for Outdoor Recreation (IAC). (See Appendix J and discussion below.) IAC is currently developing the regulatory framework for this new program. It is anticipated that applications will be requested for spring 2006 with final funding decisions made in the 2007 Legislature.

Appendix H provides a comparative discussion of three township-level PACE programs: Dunn (Wisconsin), Peninsula (Michigan), and Lancaster (Pennsylvania). All three programs

began with local sources of funding (including taxes and bonds) that were used to leverage additional state and federal dollars. All three programs are also administered by professional staff with oversight from a volunteer board appointed by the chief executive bodies for each program. Two of the programs, Dunn and Peninsula, contract portions of the easement monitoring and stewardship responsibilities to a third party land trust or consultant. The programs also differ on several other factors, including acquisition process and selection criteria, and easement provisions and termination clauses. See Appendix H for detailed information on these three local programs.

Strengths of Model 3

The primary strength of Model 3 is the far lower expense than the fee acquisition strategies employed by Models 1 and 2. The less-than-fee interest of a conservation easement typically costs a fraction of full market fee-simple acquisition. Easement acquisition programs may therefore protect, through easements, a far larger number of acres with the same amount of money. When land values are likely to rise, easement acquisition can be a less expensive way to preserve larger amounts of farmland while the prices are still low.

An additional advantage is that easement acquisition programs may qualify for matching state and federal grants that target the purchase of agricultural easements. See Appendix J for a copy of the enabling legislation for the Washington Wildlife and Recreation Program's (WWRP) new farmlands program. This program will begin to accept applications in 2006 and will provide competitive matching dollars for farmland easement or lease acquisition. Although funding assistance may be available through WWRP for fee acquisitions, the program stipulates that such purchases will be resold subject to easement as soon as possible. It is anticipated that in 2007 perhaps \$4 million could become available through WWRP matching grants to local entities for the applications received in 2006. Also see Appendix K for a fact sheet on the Federal Farm and Ranchland Protection Program (FRPP), administered by the United State Department of Agriculture through state NRCS offices. In 2005, over \$2 million was available through FRPP for agricultural easement purchase in the state of Washington.

In general, the strengths of Model 3 mirror those of Model 2, with the particular two strengths mentioned above: the lower cost and possible matching state and federal dollars. Model 3, like Model 2, ensures an affordable land base for future farmers by removing the development rights from protected farmland. The strategy also keeps the land in private ownership, which has several advantages including generation of tax revenue, and encouragement of increased investment in agricultural operations and better land stewardship from farmland owner-operators. Finally, because the land remains in private ownership, there is no burden on the program to engage in the active management of agricultural activities on the properties, even on an interim basis.

Weaknesses of Model 3

There are several drawbacks to easement acquisition, although in general the advantage of the lower cost usually supersedes any shortcomings of the strategy. Easement acquisition

generally takes longer than fee simple acquisition which may make it difficult for programs to act on properties that require quick action. It may also make it more difficult for programs to compete for land with other potential buyers who may be willing to purchase the property in fee. Furthermore, if a landowner is not interested in remaining in farming or farm management, it is less likely that they will consider selling a less-than-fee interest in the property. This may be troublesome if such landowners own particular keystone properties that are important to the overall farmland preservation program plan.

In addition, because the land remains in private ownership, the program has little control over the use of the land. As with Model 2, the program's ability to use the property for multiple purposes, such as public education or recreational access through trails, will be limited, although some of this can be accomplished through contract. Furthermore, while easement language can limit certain activities in perpetuity, specific agricultural uses can be more problematic to write into easements.

Some additional control can be regained through the use of right-of-first-refusal agreements on future sales of the property. The advantage of such an agreement is that it allows the program to review, and, in effect, approve or disapprove, any other potential buyers of the property. Some programs have required that other potential buyers submit business plans to demonstrate how they intend to use the property. The major drawback to the right-of-first-refusal agreement is the program needs to be prepared, if necessary, to actually purchase the land, and must have the capital to do so.

Finally, while easement acquisition programs are less expensive than fee acquisition programs in terms of dollars needed for acquisition, there is little likelihood of generating revenue from leases on the protected lands. Such revenue can be an important means to finance the administration of programs and additional land acquisition costs. While Model 1 may generate revenue from lease agreements, and Model 2 may generate revenue from land sales, Model 3 must find separate funding, usually in the form of general fund allocations or earmarked bond or tax dollars, to fund program administration and additional easement acquisition expenses.

Administration of Management Activities for Protected Lands

Financing management activities

As the three fee acquisition case examples demonstrate, the administration of farmland preservation programs (fee-simple, easement acquisition or a combination of the two) can be expensive. When a program makes the commitment to protect agricultural lands in perpetuity, they must also make the commitment to provide the funding necessary to administer and manage that commitment. The primary management expense is the necessary dedicated staff for administration activities.

For fee-simple acquisition programs, the administrative expenses can be particularly high because of the time and expense associated with property management. If the protected

properties are to be actively managed for agriculture, then the program needs to have specific trained staff familiar with farm management, or be willing in contract with a third party to carry out those responsibilities. If the properties are to be managed for other uses, such as public education and/or recreation, then the program needs to have staff to coordinate and manage these activities.

Whether the program retains fee ownership of the property or sells the land and becomes an easement holder, there are expenses associated with the regular monitoring of the property to ensure that its use remains consistent with program goals, acquisition agreements, and easement terms, as applicable. Such monitoring and stewardship responsibilities also require specific trained staff familiar with easements and property monitoring. Many programs elect to contract to a third party, usually a non-profit land trust that specializes in land stewardship, to conduct monitoring activities.

Finally, the enforcement of any easements on protected properties presents a potential expense at some point in the future. Many programs create an endowment fund, similar to those created by land trusts, to access in the event of an easement or other property violation occurs. If the program has contracted with a third party for property monitoring and stewardship, such as a land trust that serves as a co-holder of the easement, then the program may either make a donation to the endowment or stewardship fund of the land trust, or as some programs do, offer to bear the expense of any possible easement enforcement activities in the future.

Programs finance these various administrative functions in a variety of ways. In fee acquisition programs that retain ownership of the properties (Model 1), revenues from lease agreements may defer some administrative costs, as is the case with the Boulder County program. For fee acquisition programs that subsequently sell the properties subject to easement (Model 2), the proceeds from the property sale can contribute towards program administrative expenses, as seen in the New Jersey case. Easement acquisition programs (Model 3) must depend on other sources of funding, usually general fund allocations or earmarked bond or tax dollars, to finance administrative costs. Regardless of the model, or combination of models, employed by a program, savvy programs usually include an earmark in the funding source that provides programmatic dollars for the administrative expenses associated with implementation of the program.

Partnerships in management

Forming partnerships with other agencies and organizations can be a valuable implementation strategy when a program does not have the necessary trained staff, or in some cases, funding, to carry out certain administrative tasks. For example, in the comparative discussion of three easement acquisition programs in Appendix H, all three local programs had current or planned partnerships with land trusts or consultants to carry out specific program responsibilities, such as easement monitoring and reporting. Such partnering is also very common at state level programs. For example, the State of Ohio's Agricultural Easement Purchase Program partners with local entities (land trusts, counties, or townships) for the monitoring and stewardship of their 75 agricultural easements. The local entity becomes a co-

holder of the easement, conducts annual visits to the properties, and reports to the state on the status of the protected farms. The state offers technical assistance to local entities and provides the funding and manpower, through the state attorney general office, to enforce the easements and prosecute any easement violations.

Some partnering organizations may be able to contribute staff or volunteer time and other cash-matching or in-kind services funded through private sources. But most programs still bear the brunt of financing program administration. Partnerships typically take the form of contractual agreements in which the program pays the partnering agency or organizations for specified services that support property management and/or program administration.

Systems that Support Protected Agriculture

Although the conscientious management of protected agricultural properties is vital for their long-term preservation, it is equally important to examine other systems that may support the longevity of protected farmland and the agricultural industry more broadly. This section briefly reviews three systems (land use planning and regulation, protection of additional lands, and strengthening the agricultural industry) that can help ensure a land use and economic climate that supports the long-term viability of protected agricultural properties.

Land use planning and regulation

Comprehensive land use planning that provides vision and guidance for the future development of a community is imperative for the protection of agricultural resources. While it is important for such planning efforts to give direction for future growth, it is equally important that communities plan for agriculture by identifying areas in which agricultural production will be protected and promoted. Land use planning should give careful consideration to the land uses that surround protected parcels of agriculture to be sure that their planned use compliments the agricultural activities taking place on the protected properties.

Land use planning however is only effective when translated into regulations and other policies that actually implement and enforce the vision created by the plan. Restrictive agricultural zoning that discourages other uses in the designated agricultural areas can be a powerful regulatory tool to protect farmland. Regulations that direct growth to areas more appropriate for development can also help protect agricultural resources. Such policies can include farmland mitigation programs, cluster zoning or cluster development, and transfer of development rights or density transfer programs.

Protection of additional land

Although land use planning and regulations are important to agricultural land protection, they can often change as political and social will shifts. Therefore, the cornerstone of any farmland protection effort is the actual preservation of farmland acreage through fee simple or easement acquisition. Through the use of easements, local governments can be certain that

farmland is protected in perpetuity and will withstand political or social changes in the future. Such easements may also influence the direction of future planning.

Fee-simple acquisition and easement purchase are two primary tools for farmland preservation; however, additional land can be protected through a number of other mechanisms. Transfer of Development Rights (TDR) programs or Density Transfer Charges (DTC) programs offer a compensatory zoning mechanism whereby landowners are compensated for voluntarily severing the right to develop their land and transferring that right to a landowner in an area for which higher density development is desired. Land or easement donation, sometimes through an organized planned giving program, can be another way for landowners to ensure the future preservation of their land while retaining a life estate and earning tax benefits in the process. Promoting the implementation of TDR or DTC programs and the utilization of planned giving programs is far less expensive than protecting agricultural lands through fee simple or easement acquisition.

Strengthening the agricultural industry

Farmland can not be protected through land use mechanisms alone; it is also necessary to strengthen the agricultural industry to ensure that farming remains viable and profitable and hence worthy of protection. The agricultural industry can be supported through two channels: policies that protect the economic well-being of the individual farmer, and those that promote the overall agricultural economy.

The former category is marked by two main types of policies. The first is the use of tax advantages. Differential tax assessment, or current use valuation, allows agricultural land to be taxed for its agricultural use rather than its market value. Such programs are typically developed at the state level; however local governments can also develop additional tax benefits for land remaining in productive agriculture. Local Agricultural District programs, for example, may offer tax benefits for land remaining in agriculture in return for term easements placed on the land. Some programs also allow the local government to have a right-of-first-refusal agreement on any properties enrolled in the program.

A second means to protect the individual farmer is state and local right-to-farm ordinances that deter a variety of threats to economic viability. Right-to-farm laws may protect farmers from nuisance suits, and place limits on special assessments and eminent domain. Such laws have the broad goal of trying to protect the farmer from lawsuits and policies that infringe on their ability to farm. It is equally important to make certain that land use regulations pertaining to commercial use of land makes appropriate exceptions for agricultural operations.

The latter general area of promoting the agricultural industry is to develop policies and programs that seek to strengthen the agricultural infrastructure and increase marketing opportunities for farmers. Direct marketing through farmer's markets and community supported agriculture programs can be a valuable way for farmers to market directly to the consumer. Local governments can facilitate the development of these direct marketing opportunities by streamlining permitting and regulatory processes and offering tax incentives.

Agricultural producers depend on a complex infrastructure that includes suppliers, processors and distributors. If a region loses parts of this infrastructure, such as processing facilities, the entire agricultural sector will suffer. Local governments can attract and retain a local agricultural support service industry through land use policy that encourages agricultural uses and tax benefits that encourage those businesses.

Finally, an important way to strengthen the overall agricultural industry of a region is to promote pride in local food sources and agricultural resources. Local food labeling, such as the Puget Sound Fresh (Kitsap Select) labeling program, can help educate consumers about local foods and encourage the ethic to buy local. General public education, through schools, museums and other cultural events, as well as through signage and interpretive information regarding preserved farms and the importance of local agriculture, can also lead to a more informed consumer base, which in turn will help support local agriculture.

Section IV: *Recommendations*

This section presents recommendations based on the stakeholder interviews and document review that supported the program goals stated in Section II. Those goals were then compared to the review of management models and agricultural support systems in Section III in order to develop a comprehensive list of recommendations that should be implemented to preserve the city-owned agricultural lands and promote agriculture more broadly on Bainbridge Island. Although all of the following recommendations are important, it is not expected that the City of Bainbridge Island would be in a position to implement all of the recommendations in the near-term; rather they represent a menu of options, some more critical than others, for the City to enact when the timing is right and funding is available.

The recommendations fall into two broad categories that mirror the policy review presented in Section III: 1) recommendations for the management of the city-owned agricultural properties, and 2) recommendations to help promote agriculture more broadly on Bainbridge Island. Each recommendation is followed by a brief narrative that provides the rationale for the recommendation and offers additional information that may assist with its implementation.

Management of Protected Agricultural Properties

Ownership and legal status of properties

1: The City of Bainbridge Island should retain fee-simple ownership of the six agricultural properties that it currently owns.

Although the review of management models in Section III revealed that most farmland preservation programs do not elect to retain fee-ownership of agricultural properties, we recommend that the City of Bainbridge Island does so, at least in the short-term, for several reasons. Similar to the case example from Boulder County, Colorado, land values are very high on Bainbridge Island and there is high competition for properties with open space attributes. As a result, several stakeholders expressed concern that if the city-owned properties were sold to the public, even if subject to easement, that farmers would be outbid by non-farming individuals who may be able to satisfy the deed language by putting a couple horses to pasture or leasing the land to a farmer for production. This is the very issue that led Boulder County to the decision to maintain ownership and management responsibilities of their agricultural lands.

Furthermore, the agricultural industry on Bainbridge Island is very fragile. The number of farms and farmers has fallen precipitously, and the rejuvenation of the agricultural industry will require a partnership between the City, relevant agencies and organizations, and the very dedicated core group of farmers that work on the island. Proper active management of the properties presents a vital opportunity to strengthen agriculture on Bainbridge Island. For example, the properties could be managed in such a way to promote cooperative partnerships

between farmers, increase direct marketing opportunities, provide agricultural support services to farmers, and/or coordinate food production to ensure that various local food needs are being met. Such active management would not be possible if the lands were not held in fee.

At some point in the future, once the agricultural industry has become more re-established, some of the properties may be candidates for sale to farmers, subject to easement. See recommendations #4a-4d for suggested actions on specific farms regarding future use, management and ownership of the properties.

If any of the properties are sold or transferred in the future to another agency, organization or to a private citizen, the City should include in the sale or transfer a right-of-first-refusal agreement that gives the City the opportunity to repurchase the property when it goes to market again in the future. The agreement would allow the City to review, and approve or disapprove, any other potential buyers of the property. As noted in Section III, some other farmland preservation programs have used this tool to require that other potential buyers submit business plans to demonstrate how they intend to use the property. This can give the City some long-term control over the use of the property, even if the City is no longer the title owner.

In addition, if any of the properties are sold or transferred in the future to another agency, organization or to a private citizen, the City should seek contract agreements with the new title owner to allow for other public purposes associated with the property to continue into the long-term. For example, if there is a desire to allow annual visits to the farm by school groups, a contract agreement with the new owner may allow the school tours to continue while offering some contract income to the new owner. See additional property-specific notes regarding contracts in recommendations #4a-4d.

2a: All agricultural properties held by the City of Bainbridge Island should be subject to an agricultural easement or conservation easement that prohibits future development of the property for non-agricultural uses and promotes or requires agricultural use.

As discussed in Section III, land is not truly protected unless there is an agricultural easement or conservation easement in place to limit future non-agricultural development on the property. Fee-ownership and zoning regulations are short-term tools to protect land, but both can change as political will shifts. As seen in the case example from King County, Washington (Appendix B) and the incident in Warren County, Pennsylvania (Appendix D), the original intention and goal of a land acquisition can be lost, or completely undermined as in the Warren County example, if there is no easement in place to protect the land.

Two general easement options exist. An *agricultural conservation easement* is more restrictive; it prohibits future non-agricultural development and requires that the property to be used for agriculture. The second option is a *conservation easement* with a preferred or permitted use of agriculture. The conservation easement is more flexible in the long-term by allowing the land to revert to open space if agriculture ever becomes unfeasible. The choice

of easement should reflect current community priorities and long-term goals for the properties. See Appendix L for a report on drafting conservation easements for agriculture. Additional information on agricultural easements and specific easement language can be found at AFT's Farmland Information Center website: www.farmlandinfo.org.

2b: All conservation and/or agricultural easements should be held by a qualified independent third party, such as a land trust, for monitoring and enforcement.

The *easement holder*, the entity that is responsible for the ongoing monitoring, stewardship and enforcement of the easement, must be a separate legal entity than the title holder. Therefore the City must donate the easement to a third party if the City intends to retain title to the properties. The easement holder should be a qualified organization, such as a land trust, with training and experience with easement monitoring and stewardship. The properties should be monitored once a year, in accordance with the standards and practices outlines by the national Land Trust Alliance, to confirm compliance with the terms of the easement and to make certain that the property is consistent with its condition at the time of placing the easement.

2c: The City of Bainbridge Island should create or contribute toward a stewardship fund to assist with easement monitoring and enforcement costs.

Making a commitment to the monitoring, stewardship and enforcement responsibilities of a perpetual easement should not be undertaken without sufficient funds to cover the expenses of annual monitoring and potential enforcement actions. Although the City can expect the easement holder to provide some of these resources, the City should also create or contribute to a stewardship fund to help cover these expenses. The City should also consider including easement language that states that the City will assume the financial and prosecuting responsibility of enforcing the easement terms if any violations occur.

Uses and management of specific city-owned agricultural properties

3: The City of Bainbridge Island, or a contracted third party, should develop comprehensive present condition reports for all six properties that give detailed descriptions of each property's physical features, including soil composition, natural elements, and structure sites.

It is standard practice to produce a highly detailed present condition report on any property that is to be subject to an easement. The report should consist of photos, maps and narratives that describe all physical attributes and characteristics of the property, including but not limited to, environmental characteristics such as soil types, vegetation and watershed or drainage areas, and specific location and condition of any roads and structures on the property. The report should be used as a baseline to which all future monitoring visits can be compared. A copy of the report should be provided to any agency or organization with a legal interest (such as an easement holder) or management responsibility over the properties

4a: The City of Bainbridge Island should consider the following comments and recommended uses for the *Johnson Farm*:

The City should retain ownership of the Johnson Farm in the short-term, and due to its potential uses as a public education facility and multi-use trail site, the property should remain in public ownership for the long-term. The City may consider transferring title ownership of the property to another public agency or non-profit at some point in the future. In the short-term, the City should work with Trust for Working Landscapes to implement their management plan for mixed use of the property that includes cropland, orchard, pasture, public trail, educational facility, natural area, and affordable housing. These uses are consistent with the evaluated goals in Section II and seem appropriate for the location and characteristics of the property.



Johnson Farm
Credit: Rik Langendoen

If the property is sold or transferred at some point in the future to another agency, organization or to a private citizen, the City should include in the sale or transfer a right-of-first-refusal agreement that gives the City the opportunity to repurchase the property or review potential buyers when it goes to market again in the future. In addition, the City should pursue a long-term contract with any new title owner to ensure that the other public purposes of the property (such as use of the educational facility and multi-use trail) are continued.

4b: The City of Bainbridge Island should consider the following comments and recommended uses for the *Morales Farm*:



Terry and Tita Morales
Credit: Joel Sackett

The City should retain ownership of the Morales Farm in the short-term, and due to its potential uses as a farm stand with a possible educational component, the property should likely remain in public ownership for the long-term. The City may consider transferring title ownership of the property to another public agency or non-profit at some point in the future. In the short-term, the City should work with Trust for Working Landscapes to implement their management plan for mixed use of the property that includes small acre agriculture, farm stand, natural area, and affordable housing. These uses are consistent with the evaluated goals in Section II and seem appropriate for the location and characteristics of the property.

In addition, the City or its partner, Trust for Working Landscapes, should consider placing an interpretive display near the farm stand location that explains the history and cultural contributions of Filipino farmers on Bainbridge Island. Potential partners that could help design and construct the display include the Bainbridge Island Historical Society, Bainbridge Island Arts and Humanities Council, or other cultural organizations. Due to its historic and cultural values, the Morales farm may be a candidate for historical designation through the state registry. Such designation could open up the farm and the City's farmland preservation program in general, to additional funding opportunities.

If the property is sold or transferred at some point in the future to another agency, organization or to a private citizen, the City should include in the sale or transfer a right-of-first-refusal agreement that gives the City the opportunity to repurchase the property or review potential buyers when it goes to market again in the future. In addition, the City should pursue a long-term contract with any new title owner to ensure that the other public purposes of the property (such as public access to the farm stand and any educational site) are continued.

4c: The City of Bainbridge Island should consider the following comments and recommended uses for the *M&E Farm*:

The City should retain ownership of the M&E Farm in the short-term, and due to its significant deed restrictions that prohibit income-generating agricultural production, the property should likely remain in public ownership for the long-term. The City may consider transferring title ownership of the property to another public agency or non-profit at some point in the future. In the short-term, the City should meet with interested parties (which should include at minimum, the Bainbridge Island Metro Parks and Recreation District and the Trust for Working Landscapes) and qualified legal counsel, to develop a plan for potential uses that would be consistent with the very restrictive deed language in place. Some potential uses include a P-Patch or other community gardens, city-run Christmas tree farm, field site for WSU agricultural classes, other public educational uses. Any eventual management and partnering decisions should be based on the selected use of the property. For example a P-Patch might make the Bainbridge Island Metro Parks and Recreation District a logical partner, while the field site for agricultural classes might be a better fit for Trust for Working Landscapes. See recommendations #5a-5c for more information on potential management partnerships. Any use, management, and contract decisions for the M&E Farm should be thoroughly reviewed by qualified legal counsel.

If the property is sold or transferred at some point in the future to another agency, organization or to a private citizen, the City should include in the sale or transfer a right-of-first-refusal agreement that gives the City the opportunity to repurchase the property or review potential buyers when it goes to market again in the future. In addition, the City should pursue a long-term contract with any new title owner to ensure that the other public purposes of the property (such as public access to a community garden, for example) are continued.

4d: The City of Bainbridge Island should consider the following comments and recommended uses for the *Suyematsu, Bentryn and Crawford Farms*:

The City should retain ownership of the Suyematsu, Bentryn and Crawford farms in the short-term, however, all three farms may be good candidates for resale, subject to easement, to a private farmer in the long-term. The three farms, together with the adjacent M&E Farm and the additional Bentryn property (which is still owned by the Bentryn and includes deed restrictions to limit non-agricultural development), comprise a substantial block of farmland for Bainbridge Island. This critical mass will help keep farming viable on the parcels, whether they remain in city ownership or are sold to a private farmer.



Bentryn and Suyematsu Farms
Credit: Gerard Bentryn

It is not recommended that the farms be sold to private ownership at the present time because Bainbridge Island agriculture is in a somewhat frail position that could benefit from the proper management of these properties for the purpose of supporting and rejuvenating the agricultural community and industry. Furthermore, the farmers who currently lease the parcels represent part of the core of Bainbridge Island agriculture and are vital to its renewal. Selling the land right now could disrupt the important cooperative agricultural operations that are currently in place on the properties. If and when the parcels are to be sold in the future, the City should work closely with the farmers who currently lease the properties to ensure a smooth transition to new ownership.

Because they form a critical block of farmland, these properties should be managed for the primary goal of supporting and promoting Bainbridge Island agriculture. Other uses, especially those that might be disruptive to production agriculture such as public access for educational or recreation should be minimized or prohibited. If public access to the vicinity is desired, it should be directed to the Crawford Farm or the adjacent M&E Farm, each of which already have inherent limitations on production agriculture due to their respective legal issues.

The City should make appropriate considerations of sensitive environmental areas on the Farms, particularly sensitive riparian or drainage areas. Farm conservation plans and conservation easements are two tools that can help protect sensitive areas. See recommendations #6a and #6b for additional information on environmental considerations.

The City should consider housing options for farmers on the properties, which do not currently include housing. The lack of housing makes farming the land more difficult due to the high land values and expense of housing in the area, and will make the properties more difficult to sell in the long-term. One solution would be to cluster the development rights currently associated with the properties into one area of the block to provide affordable farmer housing for the entire area.

Because there are no water rights associated with the Crawford Farm, its potential uses are very limited, making agriculture and any future sale of the land for agriculture very difficult.

The City should enlist legal consultation to consider possible land use changes or other actions that would allow water rights from the Suyematsu and Bentryn properties to be shared with the Crawford farm. If water rights become available on the property, or if a lessee can be identified who is willing to engage in farming that requires little irrigation, such as viticulture or arboriculture, then the Crawford farm should be cleared of the current stand of trees and made available through lease for production agriculture. Because of public perception issues, the City should issue advance warning regarding the cutting of the trees and explain to the public through appropriate means how the use is consistent with the Open Space Bond and the original intentions of the purchase.

The City should research the possibility of granting historic status to the Suyematsu property through the state registry. Such designation would acknowledge the historical and cultural significance of Japanese farmers on Bainbridge Island, and may open the property up to additional funding opportunities.

If any of the properties are sold or transferred at some point in the future to another agency, organization or to a private citizen, the City should include in the sale or transfer a right-of-first-refusal agreement that gives the City the opportunity to repurchase the property or review potential buyers when it goes to market again in the future.

Partnerships for Management

In the course of stakeholder interviews, one high-ranking city official said, “The City does not have the capacity to manage [these farms] hands on, and we should not build that capacity because it is already out there in the community.” Many farmland preservation programs enlist the help of other agencies and organizations for administrative and management tasks. The City of Bainbridge Island should likewise explore partnering opportunities with qualified and competent agencies and organizations.

Three organizations emerge as logical partners for the City: Bainbridge Island Metro Parks and Recreation District (“The District”), Bainbridge Island Land Trust (“BILT”), and Trust for Working Landscapes (“TWL”). The following recommendations are based on interviews with City officials and representatives from each of the three organizations. Interviews with the three organizations addressed their willingness and capacity to partner with the City. A comprehensive assessment of the organization’s competence was not within the scope of this study. Although the interviews and correspondence with the three organizations during the course of this study showed no indication that any of the three organizations would not be competent as partners, the City should conduct its own assessment into that matter before entering into any partnerships.

5a: The City of Bainbridge Island should partner with the Bainbridge Island Metro Parks and Recreation District (The District) for the management of any property for which production agriculture is not a primary purpose.

The precedent already exists for the City to transfer title and management responsibilities to the District for other Open Space properties, and the District's mission is completely compatible with management for the three secondary goals discussed in Section II. Furthermore, the District is willing and capable to manage the properties for any or all of those three secondary goals. However the District admits that they do not have the expertise or the funding to engage in direct farm management, as would be required by the primary goal of supporting and promoting the agricultural industry on Bainbridge Island. In addition, management of the property for private commercial agricultural production would not be consistent with the District's mission, especially if there is no public access to the property. As this report assumes that the primary goal for the city-owned properties is management for production agriculture, the District would not be an appropriate partner for those properties.

The only property that would probably not be managed for the primary goal of production agriculture, and for which management by the District might be a feasible option, is the M&E tree farm whose restrictive deed prohibits any profit-generating agriculture on the land. For example, the parcel could be managed as a P-Patch. Although such use would not be the true production agriculture that the City wants to encourage through their farmland preservation efforts, it is a use that would be compatible with the production agriculture on the adjacent parcels, would be consistent with the deed restrictions on the M&E Farm, and would satisfy an unmet need on the island. The parcel could also be used as an incubator of sorts to allow would-be farmers to test their business plans, possibly in conjunction with agriculture-related course at Washington State University Extension. Any profits, however, would have to be returned to the City for future acquisitions. See recommendation #4c for additional comments on potential uses and partners for the M&E Farm.

5b: The City of Bainbridge Island should partner with the Bainbridge Island Land Trust (BILT) to hold and monitor agricultural conservation easements on the six properties.

BILT's mission for the "preservation and stewardship of the diverse natural environment of Bainbridge Island for the benefit of all" is consistent with monitoring and stewardship of easements on agricultural lands as well as open space areas. The organization has a history of partnering with the City and the District as an easement holder, and is both willing and capable to serve in a similar role on the city-owned agricultural properties. If the City ever sells or transfers ownership of the properties in the future, the easement could at that time be amended to make the City a co-holder of the easement.

Because of the high expense associated with on-going monitoring and stewardship on permanent easements, the City should create or contribute to a stewardship or endowment fund for the future monitoring and oversight of the easements. In addition, the City should offer to provide prosecuting and additional financial assistance if an enforcement situation ever arises on any of the properties. BILT should be expected to conduct annual monitoring and reporting to the City on the status of the properties, and alert the City if any violation of an easement is suspected.

5c: The City of Bainbridge Island should partner with the Trust for Working Landscapes for the management of all properties for which production agriculture is a primary purpose.

TWL is the only potential partner with a mission that is completely consistent with the management of these properties for production agriculture. Their mission is “to restore and preserve the economic diversity and rural heritage of Bainbridge Island by protecting farming, farmland and open space, providing permanently affordable housing, and demonstrating sustainable land stewardship practices, using a community land trust model of ownership, leaseholds, and governance.” The organization formed in the late 1990’s in response to the rapid decline of farms and agriculture on Bainbridge Island and to compliment the City’s efforts at farmland protection and revitalization. This placed the City of Bainbridge Island in a unique position, as few communities have a local non-profit organization dedicated to the preservation of farmland and promotion of agricultural economy

TWL is a relatively new organization, and although they have the willingness, expertise and commitment to assist with the management of these properties, they do not yet have very strong financial and staffing capacity to do so; this could change in the next couple years as the organization ages and becomes more established and better-funded. Their work on the development management plans for the Johnson and Morales Farms indicate a capacity to raise funds and a qualified volunteer base.

Their compatible mission and dedication to Bainbridge Island agriculture make TWL a logical partner for management responsibilities for any of the city-owned properties whose primary goal is to support and promote island agriculture. In the short-term, the City should provide a contract to TWL for these management responsibilities, and offer matching dollars for all management activities that TWL undertakes that are consistent with the management plan developed for each property and any additional terms of the contract. TWL could also be considered as an easement holder; however, if they are to be considered for title ownership at any point in the future, the easement would have to be transferred to another entity at that time.

In the long-term, provided that the City and TWL have had a positive and productive contractual relationship, and assuming that the City seeks to transfer title to the properties, TWL would make a logical recipient of a title transfer, following the same precedent as the title transfer of other Open Space purchases to the District. Any such title transfer would be subject to easement that would continue to be held by BILT, or co-held by BILT and the City.

Environmental stewardship

6a: An individual Farm Conservation Plan should be developed for each property by the Kitsap Conservation District.

The Kitsap Conservation District has completed farm conservation plans for the Johnson and Morales properties, and has plans to develop plans for the remaining city-owned farms.

These plans should be reviewed periodically, especially at any point at which there is a change in title or interest ownership of the property. These plans are not meant to be static documents, but should evolve as new individuals and new uses are applied to the properties. Accordingly, new lessees should review the plan, and updates should be made at that time to reflect the new lessee's intended use of the property to ensure that appropriate best management practices are in place.

6b: If there are any particular resources on a farm that require greater protection and less impact, then a conservation easement should be put into place to protect that portion of land from any future use.

It is important to note that farm conservation plans are not a guarantee of environmental protection. Similarly, zoning actions, such as the recent Critical Areas Ordinance, may be subject to amendment or change as political will shifts, and therefore also does not guarantee protection of sensitive areas. Therefore if there are any particularly important and sensitive environmental resources that warrant permanent protection on any of the city-owned properties, such as the tributary to the salmon-bearing Manzanita Creek that runs through several of the properties, the City should place a conservation easement on those areas to limit uses (which may include some agricultural uses) that may detriment the areas. Any such conservation easement should be held and monitored by an independent third party, such as the Bainbridge Island Land Trust.

Administration and financing of management activities

The City of Bainbridge Island has made a commitment to the public to protect these agricultural lands, particularly those bought with Open Space bond money. Accordingly the City must make the commitment to ensure the proper management and administration of the properties over the long-term. While the City may be able to depend on other agencies and organizations for a portion of the staffing and operations expenses associated with property management and administration, it should be assumed that the City will always maintain some fiscal responsibility over the management of these lands.

7a: If the City of Bainbridge Island plans to retain ownership and primary management responsibilities over the properties, the City should create at least one full-time City employee position dedicated to the administration and management of the properties.

As the three case examples of fee-simple acquisition programs (Appendices A, B and C) and the three examples of local easement acquisition programs (Appendix H) indicated, the administration of farmland preservation programs and property management require dedicated qualified staff. If the City of Bainbridge Island intends to retain ownership and management responsibilities for the six city-owned agricultural properties, the City should likewise invest in dedicated staff of at least one full-time position to oversee the following responsibilities:

Responsibilities would include, but are not limited to:

- Management of all lease and contract agreements with farmers and other agencies and organizations
- Development to secure additional funds for management activities (See Recommendation #8b below)
- Coordination of public relations and media to draw appropriate attention to the properties and build support for additional farmland preservation tools and programs
- Provision of technical assistance to other landowners interested in preserving their agricultural properties

If the City acquires additional properties or otherwise expands its farmland preservation efforts, it should make appropriate additions to its program staffing.

7b: If the City of Bainbridge Island plans to transfer management responsibilities to a third party, the City should designate at least one part-time (50% equivalent) city employee position dedicated to the coordination of third party partnerships and the oversight of any administration and management that remain in the City's purview.

Although contractual agreements with partner agencies and organizations may relieve the city from much of the administrative and staffing burden for the management of the properties, the City should employ at least one part-time (50% equivalent) position to coordinate the lease and contract agreements that the City has entered, as well as oversee any additional administrative responsibilities that remain in the City's purview. Depending on the level of administrative responsibility that the City retains, or gains as the program expands, the City may need to invest in additional staffing.

8a: In the short-term, the City of Bainbridge Island should finance administration and management expenses through general revenue allocations.

Nearly all public farmland preservation programs finance their administration and management costs through general revenue allocations. The City of Bainbridge Island will need to do the same, at least in the short-term, while the City still holds title and has primary responsibility for the management of the properties. Additional funding from other sources for long-term management may be possible (see Recommendation #8b).

8b: In the long-term, the City of Bainbridge Island should explore additional public and private sources of funding for the administration and management of the protected properties.

There are many sources of funding, both public and private, that offer funding of r project-specific work associated with farmland protection, including matching dollars for land or easement acquisition. Some public sources include: state grants such as WWRP, salmon recovery programs, and historic preservation programs, and federal grants such as USDA-run SARE program and the land and water conservation fund. Private sources of funding include: foundation support, including national foundations such as Kellogg, or local foundations, and private donations.

While there are a variety of funding sources for program or project-specific work, it is usually very difficult to secure on-going funding for program administration and operations. The City will need to explore local public sources of funding, including future bond or tax dollars, to help shoulder the cost of administration and operations.

9: The City of Bainbridge Island should support the fundraising and capacity-building efforts of any organizations with whom it partners.

Creating partnerships with other agencies and organizations will be important way for the City to finance the management of the properties, as well as ensure that qualified organizations are overseeing those management responsibilities. Accordingly, the City should make efforts to support the fundraising and capacity-building efforts of any organization with whom it partners. The City could show support by making information on the partner agencies and organizations available on the City's website, offering to sponsor or support fundraising events, and joining with the partners in grant-writing or other development opportunities.

10: Any future bond or tax initiative to support open space and farmland acquisition should include an earmarked portion for the continued stewardship of those properties.

Earmarked dollars for management and administration are rarely included in bond initiatives (although it may be easier to fund such general operations expenses in a tax initiative). However, "stewardship dollars" to support the on-going monitoring of the properties (to ensure that their public purposes, i.e. why they were acquired, are still being carried out) and to fund future improvements to the properties, such as trails, access, and signage, can and should be included in any future bond or tax initiative for open space and farmland preservation programs.

11: The City of Bainbridge Island should invest in public relations efforts to increase awareness of the use and goals of the protected agricultural properties.

Because the farmland preservation program will not have the same level of public access that the other open space projects or other city parks have, it is imperative that the City make efforts to keep the public aware and educated on the current use and overall goals for the preserved agricultural properties. To that end, the City should invest in signage that denotes the properties purchased and protected by the City. The City should also make effort to communicate with the public on any issues related to the use of the properties that could be contentious or misconstrued, (e.g. the cutting of trees on the Crawford property, or the lack of public access on the Suyematsu, Bentryn and Crawford properties). Information on the City's farmland preservation efforts should be regularly featured on the City's website and City staff should actively promote the program and properties in their discussion with residents and media.

Systems to Support Protected Agricultural Properties

In addition to the above recommendations regarding the management and administration of the six city-owned agricultural properties, it is suggested that the City of Bainbridge Island consider the following recommendations to improve the systems that support agriculture more broadly.

- 12: The City of Bainbridge Island should create a standing Agricultural Advisory Committee to conduct a comprehensive review of city policies and programs that impact agriculture and make recommendations to the City Council and Mayor's Office on changes to make city policies and programs more amenable to agricultural operations on Bainbridge Island.**

The City of Bainbridge Island Comprehensive Plan does an excellent job of stating and reiterating the importance of agriculture to the City, and has a goal of promoting agricultural as an enterprise and as a preferred use in many zoning districts. However it is possible that actual codified regulations, City programs, and unwritten policies may not always reflect the sentiment in the comprehensive plan and may not be as supportive of agricultural enterprises as they could be. A thorough review of all city policies was not within the scope of the present study and report, but should be undertaken to ensure that the City is doing everything possible to support agriculture and not doing anything inadvertently to hinder agriculture. The City should create a standing Agricultural Advisory Committee to oversee this analysis of current policies and programs, as well as make recommendations to the City on future policy.

In its analysis of current city policy and programs, the Agricultural Advisory Committee should apply special attention to the following areas: land use, building codes, commercial zoning and licensing, tax valuation programs, and economic development. For example, the City has a land use code and business license structure that is supportive of home-based and start-up businesses. The Agricultural Advisory Committee should verify that these codes and structures are likewise supportive of locating and encouraging Island-grown production agricultural operations which have a very different operating environment than typical home-based or start-up businesses. Another example might be to study whether certain agricultural buildings and structures should be considered for exemption from standard building codes that are typically applied to residential or commercial properties.

The Advisory Committee should include substantial representation from the farming community, relevant city departments, and any agencies or organizations that are involved in the management of the protected agricultural properties on Bainbridge Island.

Land Use Planning and Regulation

- 13: The City of Bainbridge Island should create a voluntary agricultural zoning district that discourages non-agricultural uses.**

Although zoning regulations can not guarantee the permanent protection of a property, and should accordingly never take the place of an easement to restrict future non-agricultural uses, land use regulations can provide an additional, if lesser, protection option for land, and can help set the course for future land use planning efforts. To that end, a new agricultural zoning district should be created and immediately applied to all of the city-owned properties. Other interested landowners should be able to apply for rezoning to include their land in an agricultural zoning district.

The new zoning designation should discourage all non-agricultural uses on a property. In addition, the classification should also limit uses on adjacent properties so that a neighboring parcel could not be developed for a high-intensity use that would be incompatible with agriculture on adjacent parcel. If the City enacts a new restrictive agricultural zoning district, the City may wish to first transfer all development rights associated with the relevant properties so that their development potential can be realized in other areas of the island more appropriate for dense development. See Recommendations #16 and #19 for additional comments on the transfer of development rights.

- 14: The City of Bainbridge Island should continue to encourage the use of cluster zoning. Cluster development should be required for any residential development on parcels adjacent to protected farms or properties that are zoned for agriculture.**

The City of Bainbridge Island municipal code currently states that all subdivision, plats and PUDs shall provide an adequate buffer and/or cluster development from agricultural operations. The City should uphold this policy and make it even more stringent for parcels adjacent to city-owned properties or parcels zoned for agriculture. Cluster development should be used to the greatest extent possible on the protected agricultural properties, provided that the development rights currently associated with the city-owned parcels are not transferred to separate parcels or completely extinguished.

- 15: The City of Bainbridge Island should create a farmland mitigation program to ensure that the destruction of farmland is mitigated by the preservation of farmland elsewhere on the island.**

Farmland mitigation programs, which function similar to wetland mitigation programs, but are typically created and enforced on the local level, can be a powerful tool to discourage the non-agricultural development of parcels that are currently being farmed, raise awareness of the importance of protecting farmland on the island, and ultimately ensure that farmland loss is mitigated by permanent farmland protection elsewhere. Farmland mitigation programs typically require that for every acre of farmland that is removed from production for non-agricultural development, another acre of farmland is permanently protected, preferably by agricultural easement or conservation easement, elsewhere in the general vicinity of the original acre. Farmland mitigation should be viewed as a tool of last resort, as there is no guarantee that the protected parcel will be the same quality as the original farm.

16: The City of Bainbridge Island should conduct a thorough evaluation of its TDR ordinance and make appropriate changes to make the ordinance more meaningful for use on Bainbridge Island.

The Transfer of Development Rights (TDR) or the related Density Transfer Charges can be a very valuable tool to direct development away from critical agricultural or natural resource areas. These programs can offer permanent protection of critical areas through easement, while directing denser development to more appropriate areas. The City of Bainbridge Island currently has a TDR ordinance that is not being used, and no TDR transactions have been completed to date.

The City of Bainbridge Island has many of the characteristics necessary for a successful TDR program. First, the City has both potential sending areas, in the form of agricultural properties and open space sites, as well as many viable receiving areas, in the form of sites that have the infrastructure and real estate market to support higher density development. The market for higher density developments that are able to promote a sense of place and vibrancy is critical to a successful TDR program—and Bainbridge Island has several such potential sites, including the lively and picturesque Winslow area. Second, the City has a citizenry that is educated and interested in growth management techniques, including the preservation of agriculture and open space, which would likely support a TDR program. Finally, the City has political leadership that has demonstrated commitment to growth management issues through policy and programs, such as the Open Space Bond and Winslow Tomorrow. The City of Bainbridge Island should be an ideal candidate for a successful TDR program.

There are several potential causes for the ineffectiveness of the Bainbridge Island TDR program. One common problem with unsuccessful programs is an insufficient amount of viable receiving areas. Currently the city ordinance allows receiving areas only in Winslow. Allowing receiving areas in other parts of the island could allow the TDR program to promote cluster development on parcels adjacent to those that should be preserved. For example, the transfer of all the development rights from the city-owned agricultural properties on to neighboring parcels could create clusters, possibly of affordable housing for farmers.

The City should also conduct a thorough examination of specific zoning decisions and land use planning generally to discover whether or not the City is providing density bonuses to developers in Winslow, or elsewhere, without requiring participation in a TDR or another program that would serve the public purpose of land preservation. Such density “givings” make TDR programs ineffective and do not serve the public who see no benefit from the density bonuses.

There may be several other factors that have caused the TDR ordinance not to be used. The City should conduct a thorough analysis, with appropriate land use consulting if necessary, to evaluate the ordinance and current land use planning and zoning decisions that may be more or less supportive of a successful TDR program. The analysis should include recommendations for changes to the ordinance to make the program more meaningful for Bainbridge Island.

Protection of additional land

One of the best ways to support the properties already protected by the City is to protect additional land, thereby creating a critical mass of farmland and expanding the farming community. To that end, the City has a current goal of preserving at least 1% of the Island, or approximately 180 acres, for production agriculture.

17: The City of Bainbridge Island should put forth another bond initiative, or new tax increase, to support the acquisition of additional farmland and open space.

The 2000 Community Values Survey showed strong support for the preservation of agricultural lands (92% support), and environmentally sensitive areas (90% support), and also indicated a willingness to be taxed to support preservation efforts. Furthermore, stakeholder interviews suggested that the Open Space bond programs and protected properties have been generally well received by the public. This puts the City in a good position to request additional funds from the public in the next several years. Any future funding initiative should include money for ongoing stewardship of the properties, as well as include money for both fee simple and easement acquisitions. See Appendix G for a fact sheet that discusses sources of funding for PACE programs.

In the short-term, the City should work to increase the visibility and support for Open Space program accomplishments. The City should place signage on protected properties and capitalize on media opportunities to tout the success of the program.

18: In the future, The City of Bainbridge Island should pursue easement acquisition from agricultural properties on which there is a current farmer interested in continuing farming.

This study does not recommend that the six city-owned properties be resold to a private farmer at the current time because they represent a vital critical mass and management opportunity to help rejuvenate the agricultural industry on the island. However, the City should consider easement acquisition on future properties that it wishes to protect, particularly if there is a landowner in place who wishes to continue farming the land. Easement purchase has the advantage of being a lot more affordable than fee-simple acquisition, although it does not allow as much control over the future use of the property.

If the City purchases easement on agricultural lands, it should include a right-of-first refusal clause to provide the City an opportunity to repurchase the property, or review other potential buyers, when the property goes to market again in the future.

The City should apply for matching funds from WWRP and FRPP to support easement acquisitions.

- 19: The City of Bainbridge Island should consider other land use tools and programs, such as the farmland mitigation and TDR or DTC programs, which could be used to protect additional agricultural lands.**

There are several other programs that can help permanently protect agricultural land and direct development away from critical agricultural resources. Two such land use tools, farmland mitigation programs and TDR or DTC programs, are discussed in Recommendations #15 and #16 above.

- 20: The City of Bainbridge Island should develop and promote a planned giving program for farmland and open space that would include tax benefits and a retained life estate for the landowner.**

While donation of land or easement interests may not be a viable option for many landowners, it is for some, and the City should be positioned to offer incentives and assistance to landowners who are interested in making such land donations. An organized planned giving program should offer tax benefits and a retained life estate, while requiring an easement on the property in return. The program could be administered in partnership with an appropriate agency or organization (e.g., Bainbridge Island Metro Parks and Recreation District for open space properties, Trust for Working Landscapes for agricultural properties, Bainbridge Island Land Trust as an easement holder) to offer technical and program assistance to interested landowners.

Strengthening the agricultural industry

- 21: The City of Bainbridge Island should consider property tax valuation methods to help keep farming viable on easement-protected or agriculturally-zoned properties.**

The Kitsap County Assessor's Office currently administers a differential tax assessment program for qualifying agricultural properties. The City should support the inclusion of Bainbridge Island farms in this program whenever appropriate by offering assistance to landowners. The City should also work with the county to ensure that those properties that have permanent restrictions, such as easements, receive the lowest assessment possible.

- 22: The City of Bainbridge Island should continue to uphold its Right-to-Farm ordinance.**

The City's right-to-farm ordinance protects from nuisance suits any agricultural operation or practice that is consistent with the USDA's designation of best management practices. The City should continue to uphold this policy. The City should make certain that each city-owned property complies with the best management practices prescribed by its individual farm conservation plan by the Kitsap Conservation District (see Recommendation #6a).

23: The City of Bainbridge Island should support, and wherever possible, create new direct marketing opportunities for Island-grown producers.

Direct marketing opportunities, such as the proposed farm stand on the Morales Farm, will help support Bainbridge Island agriculture while educating residents by making a local food source visible and available. The City should help provide direct marketing opportunity for and/or on the city-owned agricultural properties wherever possible. For example, the City should partner with farmers, farmers markets and other agriculture-supporting organizations to seek grant funding to support outreach and education regarding local agriculture, such as Project for Public Spaces grants for public markets and community development. In addition, the City should provide links from its website to other sites that promote direct marketing of Island-grown foods, such as Puget Sound Fresh website and the Bainbridge Island Farmers Market.

24: The City of Bainbridge Island should provide incentives to attract and retain agricultural support services that strengthen the infrastructure for Island-grown producers.

As farms and farmers have left Bainbridge Island, so have many of the necessary support services (suppliers, processors, distributors) that made up the island's agricultural infrastructure. Many island farmers cited lack of such services, especially a processing facility or kitchen, as an impediment to sustainable agricultural operations on Bainbridge Island. To address this need, the City should consider using one of the city-owned properties to house a processing facility for use by Island producers. The City should also make efforts to attract agricultural related businesses, especially those support services reported as lacking by the agricultural community, as a part of its economic development work. The Agricultural Advisory Committee (see Recommendation #12) should offer suggestions and an action plan to identify and alleviate any current gaps or needs of the island's agricultural infrastructure.

25: The City of Bainbridge Island should foster and encourage the development of a Buy-It-On-Bainbridge Program to strengthen distribution opportunities of Island-grown producers and increase local awareness and pride in a strong local food source.

Agriculture thrives in communities that value a local food source. The Bainbridge Island Comprehensive Plan calls for a "Buy it on Bainbridge" Program that would promote locally grown and produced foods. The City should work with Puget Sound Fresh and Cascade Harvest Coalition to create a modification of the Puget Sound Fresh logo to read "Buy it on Bainbridge." The Puget Sound Fresh labeling program is currently in its eighth year, and has already developed a modified label that reads "Puget Sound Fresh Kitsap Select" that is promoted by the Kitsap Community & Agriculture Alliance (see photo). A local Bainbridge Island label would allow Island-grown producers to benefit from this regional promotion while adding a more local product identifier. Additional Bainbridge Island retailers should be encouraged to use the Puget Sound Fresh programs.



Section V: *Conclusions*

In summary, the City of Bainbridge Island has demonstrated great leadership through the fee-simple acquisition of six agricultural properties. The management goals of the properties are to support and promote Bainbridge Island agriculture, and where possible to serve other public purposes, such as public education and recreational access. The City has made a commitment to their long term protection through conscientious management in partnership with Island farmers and other appropriate agencies and organizations.



Pond at Johnson Farm
Credit Rik Langendoen

This report evaluates and summarizes a variety of models and systems in place around the country that can help ensure the long term viability of protected agricultural properties and can help support the agricultural industry more broadly. The report offers a menu of recommendations that can help City of Bainbridge Island realize the public purposes behind the original acquisition of the properties.

Next steps

The City of Bainbridge Island should form a committee, possibly the same Agricultural Advisory Committee suggested in the Recommendation section, to develop a plan that prioritizes the recommendations in this report and creates a strategy for their implementation. Public input should be solicited through a series of public meetings around the Island and via the City's website and other media outlets in order to inform the prioritization of recommendations and the implementation plan in general. The City of Bainbridge Island should work with the Committee as well as other partners across the Island to implement the strategies, policies and programs necessary to realize the City's desire to support the island's agricultural industry. Proper management of the protected properties, together with investment in systems to support island agriculture more broadly, can rejuvenate and strengthen the Island's agricultural industry and farming community, making available the many benefits of a strong agricultural base and local food source to future generations on Bainbridge Island. Furthermore, implementation of these strategies will not only help preserve these benefits for Bainbridge Island residents, but will also serve as a model for communities across the Pacific Northwest.



Suyematsu Pumpkin Farm
Credit: Gerard Bentryn

Appendices

Appendix A: Case example: Boulder County, Colorado (3 pages)

Appendix B: Case example: King County, Washington (2 pages)

Appendix C: Case example: New Jersey (3 pages)

Appendix D: Warren County, Pennsylvania Incident (3 pages)

Appendix E: FIC Fact Sheet. *Status of Local PACE Programs*. 2005. (4 pages)

Appendix F: FIC Fact Sheet. *Status of State PACE Programs*. 2005. (4 pages)

Appendix G: FIC Fact Sheet. *PACE: Sources of Funding*. 1999. (4 pages)

Appendix H: Comparative discussion of three local PACE programs (6 pages)

Appendix J: WWRP Farmlands Program Legislation (3 pages)

Appendix K: NRCS Fact Sheet. *FRPP*. 2004. (2 pages)

Appendix L: *Drafting Conservation Easements for Agriculture*. 2004. (11 pages)

Appendix A: Case example: Boulder County, Colorado

(3 pages)

BOULDER COUNTY COLORADO PARKS AND OPEN SPACE

Program History

Boulder County's land protection efforts began in 1968 with the appointment of a Parks and Open Space Advisory Committee (POSAC) by the Board of County Commissioners. The committee was made up of concerned citizens and was formed to help develop a county plan for preserving open space. The committee held a series of meetings and conducted a county-wide survey over the next few years to solicit public input.

A key committee recommendation was to create a county department of parks and open space. The Parks and Open Space Department was formed in 1975. It was initially responsible for managing county park lands and developing nature programs for the general public. The role of the Parks and Open Space Department was reinforced and expanded when the county completed its first comprehensive plan in 1978. The plan included goals and policies to preserve open space, protect natural and historical resources and develop a county-wide trail system.

The program's mission is "To conserve natural, cultural and agricultural resources and provide public uses that reflect sound resource management and community values." The county acquires open space to:

- Shape and buffer urban areas;
- Preserve critical ecosystems, cultural resources and scenic vistas;
- Provide access to lakes, streams and other public lands;
- Conserve forests, agricultural land and water resources; and
- Protect areas of environmental concern.

For the first two decades, funding for the county's parks and open-space program came from annual appropriations. In 1993, voters approved a 0.25% sales and use tax to expand the program. The tax was extended in 1999 through 2019. In addition, county voters extended the 0.10% recycling and composting tax in 2000 and dedicated the revenue to the open space program. Finally, in 2004 voters authorized an additional 0.10% sales and use tax. These revenue streams have been used to back the issuance of ~\$280 million in bonds. The program continues to receive annual appropriations from the county general fund and monies from the state Conservation Trust Fund (a portion of the proceeds from the state lottery are redistributed based on population).

About two-thirds of Boulder County, or 313,500 acres, is protected from development. More than half of the protected land (171,500 acres) is federally owned. The county has protected another 70,000 acres of open space. Approximately 55,000 acres of the county's open space is owned in fee. The Agricultural Resources Division manages about 24,000 acres of county-owned land and has entered into 120 leases with 75 tenants.

Program Administration

Boulder County Parks and Open Space employs 85 full-time, two part-time, 12 extension office employees, and approximately 30 seasonal employees. The county also enlists hundreds of volunteers. The program is overseen by the Parks and Open Space Advisory Board, which makes recommendations concerning acquisitions and property management—upon consultation with program staff—to the County Commissioners.

Six full-time staff make up the program's Real Estate Division. The division is dedicated to land projects, both easement purchases and fee acquisitions. The Agricultural Resources Division, which includes five full-time staff, oversees management of county-owned agricultural lands. The division receives support from one administrative assistant to help track and properly document lease agreements.

When the county purchases an agricultural property, the Real Estate Division, with input from the Agricultural Resources Division and the Director, makes a recommendation to the Director and the Advisory Board on the final disposition of the property (e.g., continued ownership or resale subject to an easement). Staff consider the size, location and resources needed to maintain and/or improve the parcel. They also look at the resource values of the site, weigh public opinion, and determine if the program needs to recoup funds for other acquisitions. They are more likely to resell a small parcel that is somewhat isolated and may require significant investments to maintain and/or improve. They are more likely to hold parcels with multiple resource values to retain more control.

Notably, the county has only resold about a dozen properties subject to conservation easements. According to Rob Alexander with the Agricultural Resources Division, this is because the county recognizes that bona fide farmers cannot afford to buy restricted agricultural land and want to support local producers by keeping a supply of agricultural land available. Ron Stewart, the program director agreed with this assessment. However, Jan Burns, with the Real Estate Division did not. She believes the factors listed above entirely drive the program's decisions. But, when pressed to explain why so few properties have been resold subject to easement, she couldn't really explain this policy.

Agricultural properties kept in county ownership are advertised in local papers and the county notifies individuals on their waiting list by mail. Currently, 175 producers are on the waiting list for county-owned agricultural land. The county holds an informational (i.e., "pre-bid") meeting about the property. Interested individuals submit bid packets, which include a description of how they intend to use the land, by a specified date. Agricultural Resource Division staff review the bid packets and award leases. According to Alexander, this somewhat informal and subjective review process has ensured that county-owned agricultural land is leased to bona-fide farmers (i.e., not "horse people"). He believes that the county may need to develop more formal policies articulating the county's intent to lease agricultural land to operators who "...earn a living from the land" in the near future.

The county typically enters into a three-year lease agreement with an option to renew. Producers originally complained that the term of the county lease was too short. But now, most trust the county and there is high demand for county-owned land. A production plan is formulated in cooperation with the Agricultural Management staff, the Natural Resources Conservation Service and the lessee outlining acreage planted, expected yields, and required herbicides and pesticides.

Most of the county's leases are crop-share leases. The county agrees to pay some of the expenses up front in exchange for a share of the harvest. Crop share leases require extensive documentation and typically don't net as much as cash leases. Alexander and Stewart say the county offers crop-share leases to support local producers. Lease agreements generate about \$700,000, which is pumped back into the agricultural division.

In addition to managing productive agricultural lands, Boulder County Parks and Open Space runs an Agricultural Heritage Center at the Lohr/McIntosh Farm. The property was sold to the county in 1985. At the time of the sale, the landowner donated \$250,000 to the county for the establishment of an educational center.

The center includes agricultural buildings with interpretive displays that depict Boulder County agriculture from the late 1890s to 1925. It is open three days a week from May 1st through October 1st and the first Saturday of every month during the winter. Visitors can tour the property following a self-

guided tour or join guided tours led by one of the county program's cultural interpreters. Retired farmers volunteer to help maintain tools and equipment on display at the center. Stewart estimates that staff costs (one full time equivalent) associated with the center amount to roughly \$50,000 per year.

Insights/Observations

Stewart, Alexander and Burns maintain that the county's preference would be to buy conservation easements on agricultural land. Easements are relatively less expensive and would not require the county to manage the properties over time. However, about 2/3 of the rural landowners are unwilling to sell easements. Buying land in fee is often the only way to make a project happen. But, Stewart and Alexander also contend that agricultural producers cannot afford to buy easement-protected land. "Horse people" are willing and able to outbid bona fide farmers for easement-protected land. They go on to say that the county has elected to own and lease agricultural land as a way to keep agricultural land available and affordable.

Alexander notes that most producers take good care of the land. He believes the intense competition for county-owned agricultural land and their short lease term ensure good stewardship. Producers realize that if county staff do not approve of their management they may not renew the lease and find another producer to lease the land. Staff do not think leases have discouraged producers from making improvements to the land because producers can recoup some of the outlay through the rental price. And, as noted above, properties that require significant improvements may be resold subject to an easement.

Contacts

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www.co.boulder.co.us/openspace/index.htm

Appendix B: Case example: King County, Washington

(2 pages)

KING COUNTY, WASHINGTON FARMLAND PRESERVATION PROGRAM

Program History

In 1979, county voters passed an ordinance to establish a farmland protection program and authorize the issuance of \$50 million in general obligation bonds to fund program activities. From the outset, the county was authorized to acquire "...development rights, full ownership or any lesser interest..." The county ordinance, however, stipulates that full ownership only can be pursued on "first priority" land (see below) *and* when the landowner will not sell a less than fee interest. The ordinance directs the county to sell the land "as soon as practicable". However, if the county does not receive an offer equal to the appraised value, the county executive, with the approval of the county council can either re-offer the land at a public sale, lease the land for agricultural or open space uses, *or* make the land available for "publicly owned open space uses."

Historically, the program received steady funding. Most of the money came from the sale of county bonds. In addition, the program received county appropriations and funds from the federal Farmland Protection Program. Future funding seems uncertain. The county has not authorized another bond issue and the program has spent most of the original bond authorization. Approximately, \$800,000 remains.

To date, the program has completed four fee acquisitions covering 172 acres. The program spent approximately \$2 million on these projects. The county subsequently sold 95 acres, with restrictions in place, leaving 77 acres in county ownership. Of the acreage held in fee by the county, 32 acres have been leased to a farmer for a five-year term. According to Judy Herring, the program coordinator, the county executive has held off on the sale of the 57 acres pending discussions within county government on potential open space uses for the land. A twenty-acre parcel is slated for sale in 2006.

Program Administration

King County's Farmland Preservation Program is administered by 1.5 (full time equivalent) staff people. The program is housed within the county's Department of Natural Resources, Water and Land Resources Division. A seven-member selection committee, appointed by the county executive, makes recommendations to the county council about which applications to approve.

To be eligible to participate in King County's farmland protection program land must meet the definition of farmland, open space land or food producing farmland set forth in the county ordinance. In addition, the land must be located in one of six designated areas that are grouped into three priority levels (first, second and third).

At least once a year, the program conducts an application round. The ordinance specifies that in the first and second rounds, only "first priority" properties are eligible to participate. In the third selection round, first and second priority lands are eligible. In all subsequent selection rounds, all properties are eligible. In all selection rounds, higher priority properties must be protected first.

Lands classified as "first priority" include:

- "Farmland" and "open space land", as defined by the ordinance, located within the designated areas of the Sammamish, Lower Green or Upper Green River Valleys as shown on maps attached to the ordinance; and

- “Food producing farmland”, defined by the ordinance as farmland that has been used for the commercial, soil-dependent cultivation of vegetables, berries, other fruits, cereal grains and silage corn, located anywhere within the county except in areas that were removed from the county’s agricultural district (i.e., zoning district) by the King County council. This area is shown in a map attached to the ordinance.

Fee acquisitions are permitted only on first priority lands. To rank applications within the same priority group officials use the following guidelines:

- An offer that is below appraisal is favored over an offer which is at appraisal;
- An offer of development rights in land is favored over an offer of full ownership;
- An offer of farmland producing in the twelve months preceding application is favored over an offer of land which lies fallow;
- An offer of land which is more threatened by urban development is favored over an offer of land which is less threatened;
- An offer of land which will form a contiguous farming area with other offered or acquired eligible land is favored over an offer of land which is separated;
- An offer of land which will serve the dual purpose of urban separation and agricultural production is favored over an offer of land which will serve only one of such purposes; and
- An offer of farmlands in commercial production is favored over noncommercial farmlands.

The county council determines the weight given to these criteria for each parcel of property.

Land held in fee by the county is removed from the county tax rolls.

The county has sold 95 acres purchased in fee, subject to conservation restrictions, at a public auction. The county still owns 77 acres that it purchased in fee. A thirty-two-acre parcel has been held since 1990. Herring reports that this is because the land contains multiple resource values and the county executive has been consulting with other county officials to determine the best use of the property. For the remaining 45 acres, staff want to pre-qualify bidders before selling the land at auction to ensure that it is sold to bona-fide farmers.

Insights /Observations

King County, Washington has only purchased four properties in fee since the program was created. One reason, according to the program manager, is that the general public does not support fee acquisition. County residents want the land to remain in private ownership and do not like the idea that the county might compete with farmers for farmland. In addition, Herring thinks the program’s annual budget is too small to buy land outright. For example, an outright purchase in 2000 cost \$1.3 million for 25 acres; about half of the available funds reported for fiscal 2000. Land management is also an issue. Herring reports that program staff do not have much experience writing farmland leases. She also says that it is difficult to identify farmers who are looking for land. She thinks that the county would need assistance from a farm link program if it acquired additional properties in fee. Finally, Herring noted that when farmland has multiple resource values, the program cannot ensure that land purchased in fee will remain available for agriculture.

Contact

Judy Herring, Farmland Preservation Program Coordinator, King County Farmland Preservation Program, (206) 296-1470

Appendix C: Case example: New Jersey

(3 pages)

NEW JERSEY STATE AGRICULTURAL DEVELOPMENT COMMITTEE FEE SIMPLE ACQUISITION PROGRAM

Program History

The state legislature established New Jersey's easement purchase program and the State Agricultural Development Committee (SADC) in 1983 with the passage of the Agriculture Retention and Development Act and the Right to Farm Act. Five years later, the state legislature amended the law to give SADC the authority to purchase fee title to agricultural land. The law requires SADC to resell land, subject to an agricultural conservation easement, "within a reasonable time of its acquisition." (NJSA 4:1C-31.1.f.) This authority was expanded in 1989, when SADC was given a right of first refusal and option to purchase on all properties subsequently enrolled in the "eight year program" (New Jersey's agricultural districts program). Land acquired through the exercise of SADC's right of first refusal also must "...be offered for sale by the committee with a deed restriction permanently prohibiting nonagricultural development (NJSA 4:1C-42)."

SADC's farmland protection programs have received consistent funding since inception. State bonds approved by New Jersey voters in 1981, 1989, 1992 and 1995 provided \$50 million apiece for farmland protection. About 10 percent of the bonds was appropriated for fee acquisitions by the state legislature at the recommendation of SADC staff. In 1998, voters approved an unprecedented billion-dollar funding referendum that is expected to yield an average of \$54 million each year for the next 10 years for farmland protection. Funds generated from the sale of lands acquired in fee are automatically appropriated to the fee acquisition program. In the past, proceeds were returned to the larger pot of money and then re-appropriated by the legislature based on staff recommendations.

To date, SADC has completed 52 fee acquisitions covering 8,827 acres. This includes five projects in which the state awarded matching funds to county boards to acquire land in fee. The state program has spent a total of \$61.9 million, which has leveraged \$12.1 million in county matching funds. As of November 2005, forty-four of the 52 properties acquired in fee have been resold.

Program Administration

New Jersey's State Agricultural Development Committee (SADC)--a separate entity within the state's department of agriculture--administers the state's farmland protection programs. SADC employs 24 full-time staff and 3 part-time staff to run its farmland protection programs and oversee the state's right-to-farm law. Three full-time equivalent agricultural resource specialists are assigned to fee purchases. More recently, SADC has awarded matching funds to municipalities to acquire land in fee, which shifts much of the project legwork to the local boards. The locality is bound by the same rules and must resell the land subject to an easement. Once the land is resold, SADC receives its share of the proceeds as determined by the percentage of its original contribution.

The fee acquisition program is administered separately from the easement acquisition programs, but SADC uses the same eligibility and ranking criteria.

"Suitability" (i.e., eligibility) for permanent protection is based on:

- The extent to which the landowner is willing to discount the sale;
- The degree to which the purchase would reinforce and assure the future viability of municipally approved programs (i.e., agricultural districts) in productive agriculture;
- The degree of threat; and
- The comments of the respective county agricultural development boards and municipalities.

Applications are ranked according to:

- Soil quality;
- Tillable acres;
- Proximity to compatible uses (including protected farmland);
- Local commitment to farmland protection (demonstrated by land use regulations and policies that support the long term viability of the agricultural industry and consistency with municipal, county state and regional plans);
- The size and “density” (i.e., proximity of protected farmland and municipally approved farmland protection programs; and
- Local factors and the degree of threat.

For a short time in 1999, ranking criteria for fee-purchases also gave priority to properties suffering excessive crop losses.

A significant difference between the fee program and easement purchase programs is that the former allows more flexibility with respect to Residual Dwelling Site Opportunities (RDSOs). In easement purchases, RDSOs are limited to a maximum of one RDSO per 100 acres. This limit is not applied to the fee acquisition program; instead, each property is evaluated on a case-by-case basis.

Until properties acquired directly by the state are sold, the state is responsible for “...the operation and maintenance of lands acquired and shall take all reasonable steps to maintain the value of the land and its improvements”. Dan Knox, head of the fee acquisition team observes that bare land is much easier to manage than land with structures. Structures need to be maintained and may be vandalized. In addition, the state must make payments in lieu of local property taxes that equal the amount of property taxes that would have been due the year prior to the acquisition.

SADC sells land it has acquired in fee at public auction. Auctions are advertised two to three months in advance. The auction includes a minimum bid, established by SADC board on recommendation of staff. If the highest bid is at or above the minimum, they sign a purchase agreement then and there, the standard terms of which include 60 days to closing of sale. If they do not receive the minimum bid at auction, staff re-evaluate the property and minimum bid, and the minimum is changed at the next SADC board meeting if appropriate before going back up for auction. Properties usually sell at the first auction, and rarely if ever remain unsold beyond the second auction.

Nearly all properties are sold within six months of the purchase date (except for a handful of transactions involving other state agencies). Because of the rapid turnaround, the program typically does not enter into lease agreements with farmers. They have signed one lease agreement with a farmer who was renting the land prior to SADC acquisition; the property was sold with the lease in place.

Insights/Observations

According to Rob Baumley, assistant director of SADC, the Agriculture Retention and Development Act did not originally address fee acquisition because the intent of the program is to keep land in private ownership. Over time, however, program staff found that some farmers “just wanted out”. The inability to acquire land outright precluded the program from working with these landowners. Now SADC can purchase or accept donated property from landowners who will not or cannot sell an easement. It enables SADC to move quickly to purchase strategic, keystone properties under threat. In this way, the state is able to buffer earlier easement acquisitions and protect the state’s investment.

Program staff, however, maintain that it is important to resell properties as soon as possible. They want to avoid the headaches and of being a landlord (e.g., maintaining properties and finding farmers to lease the land). Knox also noted that the faster they resell land, the more money they retain for future acquisitions. SADC's lease agreements do not typically generate enough revenue to cover the costs of owning the property (payments in lieu of taxes, maintenance of buildings and utilities) and therefore cut into the net proceeds from the sale of the land. Staff also are wary of the perception (both public and among the farm community) that the state is taking farmland out of private ownership. Finally, Baumley and Knox believe that farmers are more likely to be good stewards if they own the land. It is difficult to encourage farmers to think about long-term improvements if they are leasing on a short-term (fewer than 10 years) basis.

Contacts

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New Jersey State Agriculture Development Committee
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Appendix D: Warren County, Pennsylvania Incident

(3 pages)

December 23, 2003 Tuesday CITY-D EDITION

SECTION: PHILADELPHIA; Pg. B01

LENGTH: 867 words

HEADLINE: Deal imperils preservation, critics say;
Backers of a measure for Warren County say it will yield more jobs and tax revenue.

BYLINE: By Amy Worden; Inquirer Harrisburg Bureau

DATELINE: HARRISBURG

BODY:

A state-approved land deal designed to clear the way for a Wal-Mart development in a remote corner of northwestern Pennsylvania could undermine the state's nationally recognized farmland preservation program, critics say.

The controversial bill, which passed both chambers of the General Assembly last weekweek of 12/15 and is supported by Gov. Rendell, removes an agricultural-deed restriction on a 22-acre parcel of county-owned land in Warren County.

It is believed to be the first case in which the General Assembly has removed an agricultural-use restriction for commercial development, according to the Pennsylvania Farm Bureau, which opposes the bill.

Supporters say the county needs the jobs.

Environmentalists, farm groups, and farmland preservation organizations oppose the deal because they fear it will set a precedent that could threaten a quarter of a million acres of protected farmland statewide.

"I contend that with the passage of [this bill], we jeopardize more than \$546 million that the commonwealth has invested in farmland preservation by throwing doubt on the permanency of any law that is passed to protect open space," Rep. Sheila Miller (R., Berks), said during a floor debate before the bill passed the House 106-89 last Tuesday.

Only three weeks earlier, the same bill was defeated in the House, 150-50. In the interim, the Pittsburgh-based developer, Echo Real Estate Services, hired a Harrisburg lobbying firm to push its cause.

Many lawmakers, and Agriculture Secretary Dennis Wolff,cq who initially opposed the bill said they changed their positions after learning about the project's potential to bring jobs and tax revenue to economically depressed Warren County.

"All the county has is open space. Another thing, it has a surplus of rural, poor people," said

Rep. Michael Gruitza (D., Mercer).

The bill passed the Senate, 33-16, without debate Friday night.

Located at the New York border near Lake Erie, Warren County has experienced growing unemployment and a shrinking tax base over the last decade. One-third of the land in the county is state or federal forest land, which is not taxed.

The project will be the first major commercial development in the county in 34 years.

"We need this development in Warren County," the bill's sponsor, Rep. James Lynch (R., Warren), said.

Gov. Rendell supports the land transfer as a "fiscally sound decision," his spokeswoman, Kate Philips, said.

Lynch said that, in fact, the bill protects farmland because transfers the agricultural restrictions on the original parcel to 44 acres of farmland in another part of the county. And it funnels \$3.4 million of the parcel's purchase price into the state farmland preservation program, allowing the state to protect an additional 1,700 acres of farmland.

The bill's language states that the legislation shall not be construed to authorize the removal of restrictions on any other land with agricultural restrictions or easements, or the nearly 1,000 acres of former state land now owned by counties state-conveyed land with similar deed protections.

But opponents say that if deed restrictions can be lifted on a prime piece of farmland in Warren County, what's to stop developers from seeking similar deals in Southeastern Pennsylvania, where property values are far higher?

"What's at stake is the value of deed restrictions and easements," said Janet Milkman, president and chief executive officer of 10,000 Friends of Pennsylvania, a statewide coalition of land-use groups. "We're not saying they shouldn't have a Wal-Mart if they want, just find the right place for it."

But developer Bruce Haney said there is no other commercially viable location in the mountainous county.

He said the property would not qualify for the state farmland preservation program, because the county has no farmland preservation bureau as required by the state to identify potential properties, nor is the property large enough.

The 22-acre parcel was once part of a larger farm operated by psychiatric patients at Warren County State Hospital. In 2000, through an act of the General Assembly, the state transferred the property to Warren County with the stipulation that it be used for open space or agriculture.

"Our broad concern is that a state with such a highly regarded and effective farmland preservation program could place a deed restriction on land and three years later decides it's not important," said Kevin Schmidt, mid-Atlantic regional director for the American Farmland Trust, a nonprofit farmland protection group.

Created in 1989, Pennsylvania's farmland preservation program has purchased development rights on 2,322 farms totaling 270,510 acres, making it the largest(cq this is widely agreed upon by many of these groups) state program of its kind in the country.

There are far more farms on the waiting list than there is money to buy the development rights on them, the program's director, Sandy Robison, said.

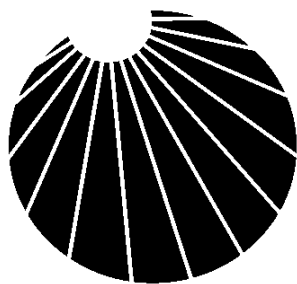
She said the state spent \$42 million to protect 23,400 acres of farmland last year, and 1,700 applications are pending.

Contact staff writer Amy Worden at 717-783-2584 or aworden@phillynews.com or [<mailto:aworden@phillynews.com>](mailto:aworden@phillynews.com)

LOAD-DATE: December 23, 2003

Appendix E: FIC Fact Sheet. *Status of Local PACE Programs. 2005.*

(4 pages)



FARMLAND INFORMATION CENTER

FACT SHEET

STATUS OF LOCAL PACE PROGRAMS



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DESCRIPTION

As of January 2005, there were at least 50 independently funded, local purchase of agricultural conservation easement (PACE) programs in 16 states.¹ This table displays the status and summarizes important information about these local farm and ranchland protection programs.

EXPLANATION OF COLUMN HEADINGS

Jurisdiction

Name of jurisdiction sponsoring program.

Year of Inception / Year of First Acquisition

"Year of Inception" is the year the ordinance creating the PACE program was approved.

"Year of First Acquisition" is the year the program acquired its first easement.

Total Easements / Restrictions Acquired

Total number of agricultural conservation easements or conservation restrictions acquired to date. This number includes joint projects with state and/or county programs and independent projects completed by the local program. This number does not necessarily reflect the total number of farms/ranches protected because programs may protect a property in stages and may hold multiple easements on the same farm/ranch.

Total Acres Protected

Number of acres protected by the program through independent and joint projects to date.

Independent Easements / Restrictions Acquired

Number of agricultural conservation easements or conservation restrictions acquired through independent projects. This number excludes easements/restrictions acquired through joint projects with county and/or state programs. This number does not necessarily reflect the total number of farms/ranches protected because programs may protect a property

in stages and may hold multiple easements on the same farm/ranch.

Independent Acres Protected

Number of acres protected through independent projects. This number excludes acres protected through joint projects with county and/or state programs.

Independent Program Funds Spent to Date

Dollars spent by each program to acquire easements/restrictions on farms/ranches through independent projects. This number excludes dollars spent on joint projects with county and/or state programs. Amounts may include unspent funds that are encumbered for installment payments on completed projects. Unless otherwise noted, this figure does not include incidental land acquisition costs—such as appraisals, insurance and recording fees—or the administrative cost of running the program. These figures may not reflect the total cost of acquiring easements, as some local PACE programs receive contributions from local land trusts and donations from landowners.

Additional Funds Spent to Date

Funds contributed toward local program acquisitions by private land trusts, foundations, individuals, state government and federal programs (see "Funding Sources" below). The value of landowner donations is not included.

Funds Available

Program funds available for the current fiscal year to acquire easements on agricultural land.

Outstanding Applications

Backlog of applications reported by program administrators.

Funding Sources

Sources of funding for each program to date. "Mitigation fees" means agricultural land mitigation fees paid by a developer as a condition of approval for a non-farm development project. "Transportation funding" refers to federal

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

Jurisdiction	Year of Inception/ Year of First Acquisition	Total Easements/ Restrictions Acquired	Total Acres Protected	Independent Easements/ Restrictions Acquired	Independent Acres Protected	Independent Program Funds Spent To Date
California						
Alameda Co. - Tri-Valley Conservancy	1993/1992	52	3,987	49	3,785	\$3,200,000
Davis, City of	1988/1988	5	1,400	2	265	\$550,000 ^
Marin Co. - Marin Agricultural Land Trust #	1980/1983	28	14,967	28	14,967	\$14,775,000
Sonoma Co.	1990/1992	67	32,307	67	32,307	\$67,390,000
Colorado						
Boulder, City of	1967/1984	13	1,737	13	1,737	\$9,849,732 ^
Douglas Co.	1994/1995	5	27,808	5	27,808	\$15,800,000 ^
Routt Co.	1996/2000	10	6,027	4	1,829	\$1,175,102
Georgia						
Carroll Co.	2004/NA	0	0	0	0	\$0
Illinois						
Kane Co.	2001/2002	20	2,669	20	2,669	\$12,526,014
Kentucky						
Fayette Co.	2000/2002	111	13,631	111	13,631	\$12,559,475
Maryland						
Anne Arundel Co. △	1991/1992	116	11,475	52	5,390	\$23,803,105
Baltimore Co.~	1979/1981	255	27,083	22	2,629	\$7,149,347 ^ ~
Calvert Co. ~	1992/1993	N/A	10,282	N/A	2,117	N/A
Carroll Co. ‡ △	1979/1980	385	44,841	13	1,311	\$4,495,446
Frederick Co. ‡	1991/1993	210	29,330	37	5,994	\$7,787,980
Harford Co. △ ~	1977/1977	210	34,500	120	21,100	\$50,500,000
Howard Co. △	1978/1984	215	19,362	177	15,327	\$185,445,000
Montgomery Co.	1986/1989	88	13,904	53	6,678	\$26,497,244 ^
Washington Co.	1991/1992	97	18,100	1	125	\$187,906 ^
Michigan						
Peninsula Township △	1994/1996	32	2,072	31	2,007	\$4,379,500
Montana						
Gallatin Co. ~	2000/2000	4	646	1	82	N/A
New Jersey						
Morris Co.	1983/1996	76	5,014	17	582	\$6,615,414
New York						
East Hampton, Town of ~	1982/1982	11	281	5	157	N/A
Pittsford, Town of ♦	1995/1996	9	1,060	7	653	\$6,259,248 ^
Southampton, Town of	1980/1980	15	530	12	397	\$25,172,320
Southold, Town of	1984/1986	76	1,591	55	1,053	\$10,949,195
Suffolk Co.	1974/1976	153	8,270	148	7,870	\$73,280,817 ^
Warwick, Town of ~	2001/1997	4	646	1	82	N/A
North Carolina						
Currituck Co. - Soil and Water Conservation District	2001/NA	0	0	0	0	\$0
Forsyth Co.	1984/1987	27	1,606	20	1,237	\$2,131,829 ^
Orange Co. ~	2000/2001	3	340	2	268	\$470,097
Rowan Co. - Soil and Water Conservation District	2004/NA	0	0	0	0	\$0
Pennsylvania						
Buckingham Township	1991/1991	43	3,500	24	842	\$6,598,961
Bucks Co.	1989/1990	90	8,450	12	967	\$2,970,803
Chester Co. ~	1989/1990	81	7,386	48	3,944	\$18,500,000 ^
Lancaster Co. △ ~	1980/1984	478	42,416	313	25,690	\$48,083,209
Plumstead Township △	1996/1997	27	1,626	14	686	\$5,342,212
Solebury Township	1996/1998	34	1,941	28	1,298	\$17,400,000 ^
Virginia						
Albemarle Co.~	2000/2002	10	2,455	10	2,455	\$2,163,600
Chesapeake, City of	2003/NA	0	0	0	0	\$0
Fauquier Co.	2002/2004	7	1,802	7	1,802	\$1,880,000
James City Co.	2001/2003	2	139	2	139	\$652,000 ^
Loudoun Co. ♦	2000/2002	5	1,007	5	1,007	\$2,670,000
Virginia Beach, City of △‡	1995/1997	118	6,879	118	6,879	\$18,216,482 ^
Washington						
King Co. ~	1979/1984	209	12,880	209	12,880	\$54,700,000
San Juan Co.	1990/1994	12	1,117	12	1,117	\$2,219,752 ^
Skagit Co.	1996/1998	54	4,236	54	4,236	\$3,049,928
Thurston Co. ♦	1996/1998	19	940	19	940	\$2,300,000
Wisconsin						
Bayfield, Town of	2002/2003	3	111	3	111	\$187,439 ^
Dunn, Town of	1996/1997	16	2,131	16	2,131	\$1,800,871
LOCAL TOTALS				1,967	241,181	\$761,685,029

STATUS OF SELECTED LOCAL PROGRAMS AS OF JANUARY 2005

Additional Funds Spent to Date	Funds Available	Outstanding Applications	Funding Sources
\$91,500,000	\$5,000,000	0	Mitigation fees
\$520,000	\$4,250,000	3	Appropriations, mitigation fees, property tax, state agricultural conservation program funds
N/A	N/A	N/A	Bonds, private contributions, FRPP
\$0	\$8,000,000	25	Sales tax, state bonds
N/A	N/A	N/A	Bonds, private contributions, sales tax, grants
N/A	N/A	N/A	Bonds, sales and use tax
\$2,554,574	\$694,330	5	Property tax, FRPP
\$0	\$2,100,000	4	Sales tax
\$4,464,582	\$1,550,000	23	Gaming revenue, FRPP
\$20,606,610	\$10,402,883	51	Appropriations, bonds, state tobacco settlement funding, state match grant, FRPP
\$400,000	N/A	4	Agricultural transfer tax, appropriations, FRPP
N/A	N/A	N/A	Agricultural transfer tax, appropriations, bonds, private contributions, transportation funding, FRPP
\$0	N/A	N/A	Agricultural transfer tax, appropriations, private contributions, property tax, recording fees, FRPP
\$1,925,532	\$10,413,000	27	Agricultural transfer tax, appropriations, bonds, property tax, FRPP
\$5,134,819	\$12,832,272	45	Agricultural transfer tax, appropriations, deed/recording fee, transportation funding, FRPP
\$0	N/A	32	Agricultural transfer tax, real estate transfer tax
\$77,777	\$12,550,000	3	Agricultural transfer tax, bonds, real estate transfer tax, FRPP
\$792,363	\$2,247,000	6	Agricultural transfer tax, appropriations, bonds, state grants, investment income, FRPP
\$3,000,000	\$3,100,000	94	transfer tax
\$2,618,750	\$9,112,250	20	Bonds, property tax, state grants, transportation funds, FRPP
N/A	N/A	N/A	Appropriations, bonds, property tax
\$73,921,746	\$8,200,000	21	Bonds, dedicated county preservation tax, property tax
N/A	N/A	N/A	Bonds
N/A	\$0	0	Appropriations, bonds, FRPP
\$2,090,000	\$15,000,000	6	Bonds, real estate transfer tax
\$1,057,538	\$18,000,000	20	Bonds, private contributions, property transfer tax, state funding, FRPP
N/A	\$8,500,000	20	Appropriations, bonds, sales tax, FRPP
N/A	N/A	N/A	Bonds
\$0	\$200,000	0	Appropriations
\$498,237	\$0	N/A	Appropriations, state grants, FRPP
\$446,000	N/A	15	Appropriations, bonds, private loans, property tax, sales tax, FRPP
\$0	\$550,000	20	Appropriations, FRPP
\$100,000	\$3,656,740	15	Bonds, private/foundation contributions, property transfer tax, FRPP
\$500,000	\$3,864,568	63	Bonds, FRPP
N/A	N/A	N/A	Appropriations, bonds, interest from rollback taxes, FRPP
N/A	N/A	N/A	Appropriations, bonds, FRPP
\$50,000	\$2,883,369	33	Bonds, property tax, FRPP
\$7,510,000	\$5,000,000	20	Appropriations, bonds, private contributions, property tax, FRPP
\$272,500	N/A	5	Appropriations, private contributions, transient lodging tax
\$0	\$75,000	0	Appropriations
\$0	\$1,500,000	6	Appropriations, local government contributions, rollback from agricultural use assessment program
\$0	\$1,500,000	3	Local government contributions, FRPP
N/A	\$0	0	Appropriations, transient lodging tax, FRPP
N/A	\$16,324,650	5	Appropriations, property tax
N/A	N/A	N/A	Appropriations, bonds, FRPP
\$0	\$0	0	Bonds, property tax, real estate transfer tax, timber excise tax
\$1,474,040	\$1,420,608	23	Property tax, state grants, timber excise tax, FRPP
N/A	\$0	0	Property tax
\$173,276	\$158,000	1	Property tax, gift from chamber of commerce, local government contributions, FRPP
\$2,120,081	\$1,341,000	35	Appropriations, bonds, county and state grants, private/foundation contributions, property tax, FRPP
\$223,808,425	\$170,425,670	653	

STATUS OF LOCAL PACE PROGRAMS

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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money disbursed under the Intermodal Surface Transportation Efficiency Act of 1991 or the Transportation Equity Act for the 21st Century (ISTEA and TEA-21). ISTEA provided funding for a broad range of highway and transit programs, including “transportation enhancements.” Easement acquisitions that protect scenic views and historic sites along transportation routes were eligible. Adopted in May 1998, TEA-21 reauthorized federal transportation spending through July 19, 2005 (including extensions). “FRPP” is the federal Farm and Ranch Lands Protection Program. Originally established in the 1996 Farm Bill, the FRPP provided matching funds to state, local and tribal agricultural easement acquisition programs. The program was expanded in the 2002 Farm Bill to include certain non-governmental organizations.

NOTES

¹ The count of states with local PACE activity includes New Hampshire. Londonderry, NH, has an established local program, but accurate numbers could not be obtained.

Figures for Marin, Calif. represent the activity of the Marin Agricultural Land Trust (MALT) using Proposition 70 (a \$776 million land protection bond) funds received by the county. In 1988, Marin County was allocated \$20 million in Proposition 70 funds, \$15 million of which was directed to MALT. This money funded easement acquisitions through June 1999. More recent easement transactions have been completed by the land trust with no easement acquisition assistance from the county. This activity is not included in this table.

△ These jurisdictions enter into installment purchase agreements (IPAs) with landowners. IPAs are structured so that landowners receive semi-annual, tax-exempt interest over a term of years (typically 20 to 30). The principal is due at the end of the contract term. Landowners can convert IPAs into securities that can be sold in financial

markets to recover the principal at any time. Jurisdictions often purchase U.S. zero-coupon bonds to cover the final balloon payment. The interest payments are generally funded by a dedicated revenue source, such as a real estate transfer tax. Therefore, “Program Funds Spent to Date” may appear relatively low for these jurisdictions.

~ Program staff did not respond to the 2005 survey. Figures were carried forward from the most recent completed survey on file.

‡ Carroll and Frederick, Md., counties offer “critical farms” programs. The programs allow landowners to sell to the county options to buy their easements for 75 percent of appraised easement value. In exchange, landowners agree to apply to the state PACE program. If the state approves the application, the landowner must repay the county from the proceeds. If the state application is not approved within five years, the county owns the easement, unless the landowner repays the program with interest. Figures for Carroll and Frederick counties include critical farm projects that have not yet been approved by the state.

◆ Program has terminated or is no longer acquiring agricultural conservation easements.

✧ “Total and Independent Easements /Restrictions Acquired” represents the number of parcels protected. The City of Virginia Beach program staff track individual parcels, rather than number of easements or restrictions acquired.

^ “Independent Program Funds Spent to Date” includes incidental land acquisition costs and/or personnel costs.

ALL MARYLAND COUNTIES

In addition to local sources of funding, Maryland counties receive a portion of the state’s agricultural land transfer tax.

Appendix F: FIC Fact Sheet. *Status of State PACE Programs*. 2005.

(4 pages)



FARMLAND INFORMATION CENTER

FACT SHEET

STATUS OF STATE PACE PROGRAMS



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DESCRIPTION

As of June 2005, 27 states have laws authorizing state-level purchase of agricultural conservation easement (PACE) programs. Montana's PACE statute expired in 2003. This table displays the status and summarizes important information about farm and ranch land protection programs in 20 states that have acquired funding and easements. To be included, the protection of agricultural lands must be a primary, stated conservation purpose of the program.

EXPLANATION OF COLUMN HEADINGS

Year of Inception / Year of First Acquisition

"Year of Inception" is the year the law creating the PACE program was approved. "Year of First Acquisition" is the year the program acquired its first easement.

Easements / Restrictions Acquired

Number of agricultural conservation easements or conservation restrictions acquired through the state program. This number does not necessarily reflect the total number of farms/ranches protected, as some programs acquire a property in stages and may hold multiple easements on the same farm/ranch. Some state programs do not hold easements but instead provide funds for easement purchase to local governments or land trusts.

Acres Protected

Number of acres protected by the program to date.

Program Funds Spent to Date

Dollars spent by each program to acquire easements on farms/ranches. Amounts may include unspent funds that are encumbered for installment payments on completed projects. Unless otherwise noted, this figure does not reflect either incidental land acquisition costs, such as appraisals, insurance and recording fees, or the administrative cost of running the program. These figures do not include addi-

tional funds contributed by federal programs, local governments, or private land trusts, foundations or individuals, nor the value of landowner donations.

Additional Funds Spent To Date

Funds contributed toward state program acquisitions by local governments (e.g. counties municipalities) private land trusts, foundations or individuals, and federal programs (see "Sources of Funding" below). The value of landowner donations is not included.

Program Funds Available

Program funds available for the current fiscal year to acquire easements on agricultural land.

Program Funds Available Per Capita

Program funds available per person based on state population figures for 2004 from the U.S. Bureau of the Census.

Outstanding Applications

Backlog of applications reported by program administrators.

Funding Sources

Sources of funding for each program.

"Transportation funding" refers to federal money disbursed under the Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act for the 21st Century (ISTEA and TEA-21). ISTEA provided funding for a broad range of highway and transit programs, including "transportation enhancements." Easement acquisitions that protect scenic views and historic sites along transportation routes are eligible for this program. Adopted in May of 1998, TEA-21 reauthorized federal transportation spending through fiscal year 2004 (including extensions). "FRPP" is the federal Farm and Ranch Lands Protection Program. Originally established in the 1996 Farm Bill as the Farmland Protection Program, the FRPP provides matching funds to state, local and tribal agricultural

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

State	Year of Inception/ Year of First Acquisition	Easements / Restrictions Acquired	Acres Protected	Program Funds Spent To Date	Additional Funds Spent to Date
California					
California Farmland Conservancy Program	1995/1997	88	24,000	\$36,000,000 ^	\$23,200,000
Colorado					
Great Outdoors Colorado Δ	1992/1995	137	226,549	\$69,050,669 ^	\$143,797,065
Connecticut					
Connecticut Farmland Preservation Program	1978/1979	213	30,087	\$86,518,128 ^	\$4,925,000
Delaware					
Delaware Agricultural Lands Preservation	1991/1996	442	79,649	\$88,506,863 ^	\$14,957,215
Kentucky					
Division of Agricultural Education and Farmland Preservation	1994/1998	98	20,649	\$10,321,041	\$5,200,987
Maine					
Farmland Protection Program	1999/1990	17	4,275	\$3,358,371	\$4,091,000
Maryland					
		1,964	281,545	\$338,090,291	\$113,387,467
Maryland Agricultural Land Preservation Foundation	1977/1980	1,693	235,299	\$230,528,310	\$106,065,747
Rural Legacy	1997/1999	271	46,246	\$107,561,981 ^	\$7,321,720
Massachusetts					
Massachusetts Agricultural Preservation Restriction Program	1977/1980	632	55,516	\$141,769,596 ^	\$25,706,827
Michigan					
The Farmland and Open Space Preservation Program	1974/1994	72	15,834	\$25,620,571 ^	\$3,228,902
Montana ×					
Montana Agricultural Heritage Program	1999/2000	8	9,923	\$888,000	\$1,420,710
New Hampshire					
		86	10,938	\$13,325,308	\$5,349,573
Agricultural Lands Preservation Program ×	1979/1980	31	2,864	\$5,000,000	\$140,000
Land Conservation Investment Program ×	1987/1988	36	6,232	\$5,349,008	N/A
Land & Community Heritage Investment Program	2000/2001	19	1,842	\$2,976,300 ^	\$5,209,573
New Jersey					
The New Jersey Farmland Preservation Program	1983/1985	1,232	133,733	\$465,158,017	\$237,269,293
New York					
Agricultural and Farmland Protection Program	1996/1998	81	14,140	\$33,425,059 ^	\$20,012,404
North Carolina					
Conservation Trust for North Carolina	1986/1999	33	4,412	\$2,384,500 ^	\$26,000,000
Ohio					
		83	15,410	\$12,500,000	\$6,900,000
Ohio Agricultural Easement Programs	1999/1999	69	12,410	\$12,500,000	\$5,400,000
Southern Ohio Tobacco Agricultural Easement Purchase Program ×	2002/2002	14	3,000	\$0	\$1,500,000
Pennsylvania					
Bureau of Farmland Preservation	1988/1989	2,565	295,447	\$460,719,453 ^	\$189,594,540
Rhode Island					
Rhode Island Division of Agriculture	1981/1985	61	4,382	\$17,093,097	\$9,873,680
South Carolina					
South Carolina Conservation Bank	2002/NA	0	0	\$0	\$0
Utah *					
		17	26,157	\$5,059,121	\$14,176,293
Critical Agricultural Land Conservation Fund	1999/2001	2	29	\$139,000	\$166,000
LeRay McAllister Critical Lands Conservation Fund	1999/2000	15	26,128	\$4,920,121	\$14,010,293
Vermont					
Vermont Housing and Conservation Board	1987/1987	368	108,945	\$42,000,000 ^	\$36,695,800
STATE TOTALS					
		8,197	1,361,591	\$1,851,788,085	\$885,786,756

STATUS OF STATE PROGRAMS AS OF JANUARY 2005

Program Funds Available	Program Funds Available Per Capita	Outstanding Applications	Funding Sources
\$12,000,000	\$0.33	12	Appropriations, bonds, private contributions, FRPP
\$8,550,000 □	\$1.86	13	Local government contributions, portion of lottery proceeds, FRPP
\$3,231,872	\$0.92	140	Bonds, local government contributions, FRPP
\$14,300,000	\$17.22	101	Agricultural transfer tax, appropriations, bonds, local government contributions, portion of lawsuit settlement, private/foundation contributions, transportation funding, FRPP, property transfer tax
\$1,500,000	\$0.36	587	Appropriations, bonds, tobacco settlement funds, FRPP
N/A	N/A	N/A	Appropriations, bonds, credit card royalties, local government contributions, private contributions, FRPP
\$30,100,000	\$5.42	165	<i>Agricultural transfer tax, bonds, local government contributions, private contributions, real estate transfer tax, FRPP</i>
\$28,100,000	\$5.06	140	
\$2,000,000 □	\$0.36	25	
\$8,500,000	\$1.32	100	Bonds, local government contributions, private contributions, transportation funding, FRPP
\$1,500,000	\$0.15	19	Local government contributions, private/foundation contributions, repayment of tax credits by landowners withdrawing from the state's circuit breaker program, FRPP
\$0	\$0.00	N/A	Appropriations, FRPP
\$0	\$0.00	6	<i>Appropriations, local government contributions, FRPP</i>
\$0	\$0.00	0	
\$0	\$0.00	0	
\$0	\$0.00	6	
\$127,825,178	\$14.69	500	Appropriations, bonds, local government contributions, portion of state sales and use tax, FRPP, private/foundation contributions
\$12,600,000	\$0.66	0	Bonds, property transfer tax, local government contributions, FRPP
\$0	\$0.00	2	Appropriations, FRPP
\$3,120,000	\$0.27	1,107	<i>Bonds, FRPP</i>
\$3,120,000	\$0.27	1,107	
\$0	\$0.00	0	
\$25,000,000	\$2.02	1,900	Appropriations, bonds, cigarette tax, interest on securities, local government contributions, FRPP
\$2,000,000	\$1.85	35	Appropriations, bonds, local government contributions, private contributions, FRPP, property transfer tax
\$24,185,245 □	\$5.76	19	Deed/recording fees
\$798,000	\$0.33	2	<i>Appropriations, FRPP</i>
\$50,000	\$0.02	1	
\$748,000 □	\$0.31	1	
\$2,100,000	\$3.38	58	Appropriations, bonds, Farms for the Future pilot program, local government contributions, private/foundation contributions, property transfer tax, transportation funding, FRPP
\$277,310,295		4,766	

easement acquisition programs. The program was expanded in the 2002 Farm Bill to include certain non-governmental organizations. In addition to these sources of funding, several local programs reported financial contributions from private individuals or foundations

STATUS OF STATE

NOTES

PACE PROGRAMS

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.

- △ Program activity includes fee simple acquisitions of agricultural land. All programs with fee activity included on this fact sheet have policies requiring resale of the restricted property.
- × Program has terminated or is no longer acquiring agricultural conservation easements.
- Program funds available include monies for other land conservation purposes.
- ^ “Program Funds Spent to Date” includes incidental land acquisition costs and/or personnel costs.
- * In Utah, the LeRay McAllister Critical Lands Conservation Fund and the Critical Agricultural Land Conservation Fund—administered by the Utah Department of Agriculture and Food (UDAF)—completed seven joint projects. For the purposes of this table, these projects are included in the figures for the LeRay McAllister program. The projects covered 2,526 acres. UDAF contributed \$391,000 and holds the easements.

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Appendix G: FIC Fact Sheet. *PACE: Sources of Funding*. 1999.

(4 pages)



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.

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.

Benefits

- Bonds allow programs to commit large sums to farmland protection while land is still available and relatively affordable.
- Bonds distribute the cost of acquisition over time.

Drawbacks

- Interest paid on bonds increases the overall cost of the program.

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 taxes 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 hot and drops off when the market cools.

Legislatures can enact statewide transfer taxes or laws authorizing local jurisdictions to levy transfer taxes. In Washington, all counties may levy up to 1 percent of real estate sales. In contrast, the Maryland legislature grants transfer tax authority to local jurisdictions on a case-by-case basis. Enabling legislation typically requires taxing authorities to secure 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.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

State constitutions and laws dictate whether local governments have the authority to levy sales taxes. According to the National Association of Counties, fewer than half of the nation's counties have the authority to levy a sales tax. However, there are efforts in at least two states to expand the capacity of local jurisdictions to raise revenues for farmland protection. Farmland protection advocates should check with local government administrators or state legislators for more information about this potential source of revenue.

Benefits

- In general, taxes provide a regular stream of revenue.
- Taxes on retail sales ensure that tourists help protect the open land they are enjoying.

Drawbacks

- Taxes are unpopular.
- Raising 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.

ANNUAL 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, annual 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.

Benefits

- Expenditures reflect the will of the current electorate.
- This approach saves financing costs.

Drawbacks

- Funding is unpredictable from year to year.

FEDERAL FUNDS

Farmland Protection Program

The 1996 Farm Bill established the Farmland Protection Program to protect farmland from conversion to nonagricultural uses. The FPP provides matching grants to established state, local and tribal programs, up to a maximum of 50 percent of the final negotiated sales price of conservation easements. The farm bill authorized up to \$35 million over six years.

Eligible PACE programs submit proposals to USDA Natural Resources Conservation Service state offices. NRCS has published three requests for proposals between 1996 and 1998. During these application cycles, the USDA Natural Resources Conservation Service disbursed the entire \$35 million appropriation. NRCS will request additional funds for the FPP for fiscal year 2000. For more information contact an NRCS state office or visit NRCS' web site at <http://www.nrcs.usda.gov/>.

Hazard Mitigation Grant Program

The Hazard Mitigation Grant Program was created in November 1988 by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, assists 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 government's 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

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

program. To apply, contact the state emergency management agency, state hazard mitigation officer or a FEMA regional office. Information is also available online at <http://www.fema.gov/mit/hmgrp.htm>.

Transportation Funding (ISTEA and TEA-21)

The Intermodal Surface Transportation Efficiency Act of 1991 provided funding for a broad range of highway and transit programs, including "transportation enhancements." Enhancements are intended to improve the cultural, aesthetic and environmental quality of transportation routes. Easement acquisitions that protect scenic views and historic sites along transportation routes are eligible for this program. The Transportation Equity Act for the 21st Century, adopted in May of 1998, re-authorized transportation spending through fiscal 2003. Funding for enhancements was increased by nearly 40 percent nationwide, to \$3.6 billion.

Private conservation organizations and public entities are eligible to apply for enhancements money. The program covers 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, ISTEA and TEA-21 demonstrate that agricultural land provides floodwater storage and scenic vistas along transportation corridors, which helps make the case for farmland protection.

Drawbacks

- Funding is not predictable from year to year.
- HMGP and ISTEA funds are rarely used for agricultural easement acquisitions.
- Easement values in floodplains may be too low to encourage participation in the HMGP.

CREATIVE SOURCES OF FUNDING

Cellular Phone Tax

The city of Virginia Beach, Virginia, collects a 10 percent tax on cellular phone bills up to a maximum of \$3 per month. Proceeds from the tax are deposited in the general fund, and a flat dollar amount is earmarked for the farmland protection program.

The General Assembly gave all Virginia localities the right to tax cellular phone usage in the mid-1990s. In other states local jurisdictions may already have the authority to tax cellular phone service. Farmland protection advocates should check with town or county counsel.

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 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 receives 0.5 percent of all charges and has received about \$60,000 to date.

Local jurisdictions do not have a large enough pool of potential card users to make this alternative worthwhile. State programs may be required to seek statutory authority to issue a credit card. LFMF sought statutory authority to issue its credit card in 1995. There was overwhelming support among legislators for this funding option.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

For additional information on Purchase of Agricultural Conservation Easements and other farmland protection programs, the Farmland Information Center offers publications, an on-line library and technical assistance. To order PACE: What Works, a 38-page comprehensive technical report (\$14.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.

Lottery Proceeds

In 1992, 58 percent of Colorado voters approved the Great Outdoors Colorado Amendment redirecting a portion of lottery revenues to protect open space. The amendment also created the Great Outdoors Colorado Trust Fund to oversee the distribution of the funds. Great Outdoors Colorado funds wildlife habitat restoration, land conservation (including farmland), and parkland acquisition and maintenance. GOCO received an average of \$17 million each year between 1994 and 1999.

Enabling legislation for state lotteries typically specifies how revenues can be spent. Consequently, reallocating revenues to land protection often requires legislative action. Contact state legislators for more information about this potential funding source.

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*, 107 S. Ct. 3141, that there must be a direct connection or "nexus" between exactions from landowners and the proposed development's impact. Furthermore, in 1994 the U.S. Supreme Court determined in *Dolan v. Tigard*, 114 S. Ct. 2309, 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.
- The check-off box and credit card programs allow residents to choose to contribute to farmland protection.
- The mitigation ordinance 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 take a few years to generate significant sums.

ISSUES TO ADDRESS

- 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?

Appendix H: Comparative discussion of three local PACE programs

(5 pages)

COMPARATIVE DISCUSSION OF LOCAL PACE PROGRAMS

Following is a comparative discussion of three PACE programs administered by local governments. The Dunn Township (Wisconsin), Lancaster County (Pennsylvania) and Peninsula Township (Michigan) PACE programs all are rooted in community planning efforts. In each case, local officials and community residents developed local plans that called for farmland protection. All three communities adopted land use controls to implement the plans. When farmland continued to be converted in spite of these efforts, community members explored other tools and ultimately developed programs to buy permanent easements on farmland. What follows is a comparative discussion of some of the key elements of the three programs.

PROGRAM PURPOSES

The preservation of farmland is the primary purpose for all three programs. However, both Dunn and Peninsula Township also protect open space and/or environmentally sensitive areas. Peninsula makes a case in the “Findings and Declaration of Purpose” section of its ordinance for the protection of panoramic views, which may reflect the township’s long history as a resort community.

In contrast, Lancaster’s program purposes are focused almost exclusively on the business of farming. Among other purposes, the guidelines state that the program is intended to “...encourage landowners to make a long-term commitment to agriculture by offering them financial incentives...” and to “...assure permanent conservation of viable agricultural lands in order to protect the agricultural economy of the Commonwealth.” This fundamental difference runs through the administration of the program and is reflected in the eligibility and ranking criteria and the easement provisions.

GOVERNANCE AND STAFFING

Volunteer boards, appointed by the chief executive bodies, oversee all three PACE programs. Board composition guidelines are set forth in Dunn’s local ordinance and in Pennsylvania state law. Peninsula Township’s ordinance does not stipulate the make up of its selection committee. Instead, Peninsula’s Township Board must ensure that the committee represents the geographical and agricultural interests within the community. Lancaster’s nine-member board is slightly larger than the seven-member boards in Dunn and Peninsula and places more emphasis on farmer participation. Neither Dunn nor Peninsula require farmer participation, but encourage it.

Professional staff administer all three programs. Even the relatively small programs in Dunn and Peninsula require part-time staff to manage day-to-day operations. The programs also require a team of professional service providers including appraisers, attorneys, land trust staff and/or consultants.

PROGRAM ACTIVITIES

All three programs focus on buying permanent agricultural conservation easements. However, Lancaster and the Pennsylvania state program originally had the authority to buy 25-year easements. Lancaster negotiated 19 term easements before the state and county discontinued term easements in 1994. Given strong landowner demand for permanently protecting farmland, it no longer made sense

to expend public resources on temporary protection. Since 1994, the county has converted nearly all of the term agreements to permanent restrictions.

Dunn, Lancaster and Peninsula are authorized to buy land in fee, which gives the programs the flexibility to approach landowners in strategic locations who have no interest in selling a partial interest. However, neither Peninsula nor Dunn has policies in place for the final disposition of land once purchased. Lancaster's experience with fee acquisition points to the need for clear policies to help overcome any public misconceptions about fee transactions.

FUNDING SOURCES

Regular consistent funding is an important characteristic of all effective PACE programs. Residents in Dunn and Peninsula approved property tax increases to pay for farmland protection. Dunn has since borrowed money against this revenue stream and Peninsula is considering a bond. Lancaster has consistently appropriated or issued county bonds to pay for farmland protection.

Once established, all three programs leveraged local money with matching funds from other sources. Lancaster is able to tap into the Pennsylvania state program. Dunn's program, which also protects open space and environmentally sensitive areas, has qualified for funds from the Wisconsin Department of Natural Resources (WDNR) and the county parks department. Notably, WDNR has required some land to be taken out of production and restored as "natural areas" and the county parks department has required restrictions on confined feeding of livestock and public access. These provisions could clearly limit future agricultural activities and represent the difficult compromises that may need to be struck by a multi-purpose program.

Peninsula has received money from the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. ISTEA provided a broad range of highway and transit programs, including "transportation enhancements." Easement acquisitions that protect scenic views and historic sites along transportation routes were eligible. TEA-21, adopted in May 1998, reauthorized federal transportation spending through 2004 (including Congressional extensions). The program also received a significant grant from the state Natural Resources Trust Fund. Both funders required the protection of scenic views.

All three programs have received funds from the federal Farm and Ranch Lands Protection Program (FRPP). The FRPP is a federal program administered by USDA's Natural Resources Conservation Service (NRCS) that provides matching funds to eligible entities to buy easements on farm and ranch lands. Participation in FRPP comes with its own restrictions. Most significant are the limits on impervious surface coverage, and the conservation plan requirement. A conservation plan is a document that recommends best management practices such as crop rotation, crop residue management, tillage practices, water management and nutrient management practices to control soil erosion and improve water quality. Conservation plans follow guidelines set forth in the NRCS national planning handbook. For the purposes of FRPP participation, conservation plans apply to "highly erodible" cropland and reduce erosion to the level stipulated in the Food Security Act of 1985. All three PACE programs limit impervious surface coverage and require conservation plans when using FRPP dollars. Programs that participate in FRPP work with NRCS national staff to negotiate easement documents that meet the federal requirements. Assistance can also be provided by the state FRPP program manager.

ACQUISITION PROCESS

The three case studies find some significant differences in program eligibility criteria. Dunn and Peninsula use their criteria to target protection in locally designated agricultural areas. Dunn's Agricultural Preserve Area represents land covered by A1 Exclusive Agricultural Zoning. Peninsula's Agricultural Preservation Area is a determination made by the Planning Commission and shown on the Agricultural Preservation Area Map.

Lancaster's eligibility requirements—mandated by the state program—help direct protection, but do not target protection as exactly as Dunn and Peninsula's criteria. Lancaster requires landowners to be enrolled in Agricultural Security Areas (ASAs). ASAs are voluntary, state-authorized districts adopted by local township governments that provide participating landowners with protection from nuisance lawsuits and eminent domain proceedings. Because ASAs are formed by landowners on a voluntary basis, not designated by the local planning body, there is less consistency with local plans. This may be offset by the requirement that effective agricultural zoning cover participating farms before appraisals can be conducted. In addition, the county requires minimum acreages, productive soils and tillable land—criteria aimed at ensuring future agricultural viability—a stated purpose of the program.

The ranking criteria for all three programs are modified Land Evaluation and Site Assessment (LESA) systems. LESA is a numeric rating system created by NRCS to evaluate a parcel's relative agricultural importance. The land evaluation (LE) component of a LESA system measures soil quality. It is usually based on land capability classes, important farmland classes, soil productivity ratings and/or soil potential ratings. The site assessment (SA) component evaluates other factors that contribute to the site's agricultural importance, such as parcel size and on-farm investments. In each community, the ranking system is used to determine the order in which properties are appraised and ultimately selected for purchase.

There are some significant differences. While Dunn and Lancaster consider many of the same factors (soil quality, size of farm, proximity to other agricultural land, relative development pressure) they group and weight the factors differently. Dunn gives more weight to historic, archaeological, scenic and environmental features, which is consistent with the stated purposes of its program. Dunn also awards points based on the degree to which landowners are willing to discount their development rights and the availability of matching funds. Financial considerations are not considered during the formal ranking process in Lancaster, but may come into play after appraisals have been conducted and the board selects properties to protect.

Lancaster's ranking system, which works within the mandatory state framework, includes criteria to target the county's active agricultural operations. For example, the system awards more points to farms with higher gross annual receipts, a higher percentage of harvested crop, pasture and grazing land and a higher percentage of NRCS conservation plan implementation. Historic, scenic and environmental qualities only account for five points out of 400 (before multiplied by the adjustment factor).

Peninsula's point system is unusual. It assigns a third of the total possible points based on location within a scenic view map adopted by the Peninsula Township Planning Commission. This supports the program's goal of protecting panoramic views. Another third of the points are tied to top rated sites on the Red Tart Cherry Site Inventory for Grand Traverse County prepared by NRCS. It is uncommon for a point system to prioritize one commodity, but appropriate here given the nature of Peninsula's agricultural industry and the PACE program's purpose. Peninsula's ordinance states that

fruit production is the predominant type of agriculture on Old Mission Peninsula and calls for the protection of sites with the unique characteristics to support this industry.

Dunn, Lancaster and Peninsula hire certified appraisers to determine easement values. Appraisers use comparable sales to estimate fair market value and then subtract an estimate of restricted value to determine the value of the easement. More recently, Lancaster County has experimented with a “points-based” appraisal system to determine easement values. Points are assigned based on farm quality, development potential, soils, road frontage and proximity to public sewer and water. The total score is then multiplied by a set dollar amount to index the final easement value to trends in the local real estate market. Because state law requires standard appraisals, the new system only could be used on projects undertaken by the county without assistance from the state program. In addition, values must be determined by standard appraisals to participate in the FRPP program.

Lancaster and Peninsula both have established informal per acre caps to help control program costs. Lancaster recently lowered its cap from \$5,000 per acre to \$4,000 per acre. Peninsula caps the amount spent on individual projects at 30 percent above the median easement price. If the median easement price was \$2,000 per acre, the program would not pay more than \$2,600 per acre during that round. This cap is optional and the Township Board may decide to override it.

EASEMENT PROVISIONS

All three programs use agricultural conservation easements to protect farmland. Agricultural conservation easements typically contain provisions that limit uses and activities that are inconsistent with commercial agriculture, permit agricultural uses, structures and related enterprises, and do not require public access.

All three programs limit non-farm development but do allow agricultural structures. Dunn only permits new residences if negotiated at the time the easement is executed. These residences must be built within predetermined building envelopes. Lancaster permits one additional structure to provide housing for seasonal or full-time employees, or to be the principal dwelling of the landowner on not more than 2 acres of land. Program staff must review and approve the siting of the structure and driveways. Peninsula permits residences negotiated at the time the easement is negotiated as long as they do not exceed an overall density of one dwelling per 20 acres and are located within a defined building envelop.

Lancaster and Dunn’s easement do not include any restrictions on agricultural structures unless they are using FRPP dollars, which would trigger limits on impervious surface coverage. Peninsula specifies which uses and/or structures qualify as an agricultural use, but this list is comprehensive and even permits on-farm processing, provided that a majority of the products are grown on the property.

All of the programs address subdivision. In keeping with its Land Use Plan, Dunn does not allow divisions of protected land. Peninsula permits subdivision. The resulting parcel is still covered by the terms of the easement including limits on residential development. Lancaster also allows subdivision if certain requirements are met. For example, all divisions must result in viable farm tracts and be capable of producing more than \$25,000 in gross agricultural sales and be consist with local planning and zoning.

In addition to these provisions, Dunn includes some atypical requirements. For example, the sample easement limits activities, such as cutting down trees and manipulating wetlands and mandates farming in accordance with a conservation plan, regardless of whether the project involves FRPP

funds. These provisions may reflect Dunn's broader program purposes, which include the protection of environmentally sensitive areas and open space in addition to agricultural resources.

Peninsula includes restrictions on development that would obstruct scenic views.

Lancaster's easement is more clearly focused on productive agriculture and does not include provisions aimed at protecting other resources. The easement does, however require that agricultural production be conducted in accordance with a conservation plan approved by the county conservation district or the county board, regardless of whether the project involves FRPP funds. The easements also prohibit sod and nursery operations from removing excessive topsoil.

None of the programs require public access. Dunn has included public access on a few projects at the request of Dane County Parks.

MONITORING AND STEWARDSHIP

Easement monitoring is a key program function that is sometimes overlooked and often falls to the bottom of the pile. The relatively small, township level programs in Dunn and Peninsula hire third parties to assist in easement monitoring. Dunn prepares its own baseline reports and then co-holds easements with a local land trust. The land trust prepares the annual monitoring reports and shares enforcement responsibility in exchange for a monitoring and enforcement endowment (\$1,000 plus one percent of the easement purchase price). Peninsula Township hires a regional land conservancy to prepare its baseline reports and then hires consultants to conduct annual monitoring inspections and produce reports. In contrast, Lancaster conducts its own annual monitoring and reporting. However, staff report that it is difficult to carve out time for this important function and are planning to hire Lancaster Farmland Trust and other professionals to help them catch up on monitoring work.

EASEMENT TERMINATION

While all three programs purchase *permanent* easements, Peninsula provides an administrative process for terminating easements. The town requires a finding by the Township Board that the protected farmland can no longer be used for agriculture and a township vote on a proposition to approve the disposition of the conservation easement.

Similarly, state law in Pennsylvania provides that if protected farmland is no longer viable agricultural land, the state may terminate or sell back the easement after 25 years from the date of original purchase. Termination is contingent upon the approval of the state board, and the county, subject to the approval of the county board. This provision applies to all Lancaster County easements that involve state funds.

Termination provisions give the program flexibility over time. Easements can be released in areas that are no longer suitable for agriculture so that public funds can be redirected to more important agricultural areas.

In contrast, the Town of Dunn and Lancaster County do not provide for termination at all. Therefore, projects completed by the Town of Dunn and Lancaster County projects that did not involve Pennsylvania state funds can only be terminated through a judicial process.

Appendix J: WWRP Farmlands Program Legislation

(2 pages)

from

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5396

Chapter 303, Laws of 2005

59th Legislature

2005 Regular Session

HABITAT CONSERVATION PROGRAMS

EFFECTIVE DATE: 7/1/07 - Except section 15, which becomes
effective 7/1/05; and section 16, which becomes effective 7/24/05.

NEW SECTION. **Sec. 7.** A new section is added to chapter 79A.15 RCW to read as follows:

(1) The farmlands preservation account is established in the state treasury. The committee will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the committee. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city or county acquires a property through this program in fee simple, the city or county shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city or county shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities and counties may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The committee may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county or city does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the committee to fund staff positions or other overhead expenses, or by a city or county to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The committee may not approve a local project where the local agency's share is less than the amount to be awarded from the farmlands preservation

account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's share.

(9) In determining the acquisition priorities, the committee must consider, at a minimum, the following criteria:

- (a) Community support for the project;
- (b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;
- (c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;
- (d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;
- (e) Benefits to salmonids;
- (f) Benefits to other fish and wildlife habitat;
- (g) Integration with recovery efforts for endangered, threatened, or sensitive species;
- (h) The viability of the site for continued agricultural production, including, but not limited to:
 - (i) Soil types;
 - (ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;
 - (iii) Suitability for producing different types or varieties of crops;
 - (iv) Farm-to-market access;
 - (v) Water availability; and
- (i) Other community values provided by the property when used as agricultural land, including, but not limited to:
 - (i) Viewshed;
 - (ii) Aquifer recharge;
 - (iii) Occasional or periodic collector for storm water runoff;
 - (iv) Agricultural sector job creation;
 - (v) Migratory bird habitat and forage area; and
 - (vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the committee will require the projects to meet the following criteria:

- (a) Enhancement or restoration projects must further the ecological functions of the farmlands;
- (b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;
- (c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and
- (d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the committee will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the committee and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

Appendix K: NRCS Fact Sheet. *FRPP*. 2004.

(2 pages)

Fact Sheet

September 2004

Farm and Ranch Lands Protection Program

Overview

The Farm and Ranch Lands Protection Program (FRPP) is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, or local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. FRPP is reauthorized in the Farm Security and Rural Investment Act of 2002 (Farm Bill). The U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) manages the program.

Benefits/Accomplishments

Through 2003, more than 300,000 acres have been protected in 42 states.

How FRPP Works

USDA works through State, Tribal, and local governments and non-governmental organizations to conduct the FRPP. These entities acquire conservation easements from landowners. Participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land. All highly erodible lands enrolled must have a conservation plan developed based on the standards in the NRCS Field Office Technical Guide and approved by the local conservation district. Landowners retain rights to use the property for agriculture.

To participate, a landowner submits an application to an entity—a State, Tribal, or local government or a non-governmental organization—that has an existing farm or ranch land protection program. The NRCS

State Conservationist, with advice from the State Technical Committee, awards funds to qualified entities to purchase perpetual conservation easements.

Eligibility

To qualify for FRPP, the land offered must be part or all of a farm or ranch and must:

- Contain prime, unique, or other productive soil or historical or archaeological resources;
- Be included in a pending offer from a State, Tribal, or local government or non-governmental organization's farmland protection program;
- Be privately owned;
- Be covered by a conservation plan for any highly erodible land;
- Be large enough to sustain agricultural production;
- Be accessible to markets for what the land produces;
- Be surrounded by parcels of land that can support long-term agricultural production; and
- Be owned by an individual or entity that does not exceed the Adjusted Gross Income (AGI) limitation.

The AGI provision of the 2002 Farm Bill impacts eligibility for FRPP and several other 2002 Farm Bill programs. Individuals or entities that have an average AGI exceeding \$2.5 million for the three tax years immediately preceding the year the contract is approved are not eligible to receive program benefits or payments. However, an exemption

is provided in cases where 75 percent of the AGI is derived from farming, ranching, or forestry operations.

If the land cannot be converted to non-agricultural uses because of existing deed restrictions or other legal constraints, it is ineligible for FRPP.

Funding

FRPP is funded through the Commodity Credit Corporation. The FRPP share of the easement cost must not exceed 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement, a State, Tribal, or local government or non-governmental organization may include a charitable donation by the landowner of up to 25 percent of the appraised fair market value of the conservation easement. As a minimum, a cooperating entity must provide, in cash, 25 percent of the appraised fair market value or 50 percent of the purchase price of the conservation easement.

For More Information

If you need more information about FRPP, please contact your local USDA Service Center, listed in the telephone book under U.S. Department of Agriculture, or your local conservation district. Information also is available on the World Wide Web at:

<http://www.nrcs.usda.gov/programs/farmbill/2002/>



Visit USDA on the Web at:

<http://www.usda.gov/farmbill>

Note: This is not intended to be a definitive interpretation of farm legislation. Rather, it is preliminary and may change as USDA develops implementing policies and procedures. Please check back for updates.

Appendix L: *Drafting Conservation Easements for Agriculture*. 2004.

(10 pages)

Drafting Conservation Easements for Agriculture

Judy Anderson and Jerry Cosgrove

Introduction

Over the past 50 years, agriculture and the rural landscape have changed dramatically. Numerous farms and ranches have gone out of business while others have expanded, consolidated, diversified or changed enterprises entirely in order to survive. At the same time that agriculture was undergoing this rapid change, the last quarter of the 20th century witnessed a new threat to agriculture: unchecked suburban and other non farm development in and around our urban centers. According to the National Resources Inventory (NRI) data from the United States Department of Agriculture, during the 1990's, the U.S. lost over 1 million acres of farmland each year, much of it the prime and unique soils best suited to agricultural production.

In response, many states and local governments, primarily in the northeast and west coast, developed farmland protection programs utilizing deed restrictions much like conservation easements. In fact, the concept of purchase of development rights (PDR) was pioneered in Suffolk County on Long Island in the mid-1970's and pre-dated most conservation easement statutes around the country including New York State. Several Northeastern states soon followed and a growing number of states and local municipalities are establishing purchase programs. More recently, some states, like New Jersey and Pennsylvania, have significantly increased the amount of funding for their programs, and the Federal Farm and Ranchland Protection program received an enormous increase in funding in the 2002 Farm Bill to over \$100 million per year. As a result, many of the agricultural easements currently used are found in state, county or township purchase of agricultural easement (PACE) or PDR programs.

This article will examine the fundamental premises underlying agricultural easements and will discuss key drafting issues that reflect those premises and objectives. Some of the key drafting issues will include the easement purpose, construction of agricultural buildings and structures, construction of residential and farm worker dwellings, agricultural practices, subdivision and rural enterprises.

Context

The broad-based support for "working landscapes" masks some fundamental and differing perspectives involving the issue--differences that create tensions that surface inevitably as we draft agricultural conservation easements.

One of the most basic involves the notion of "preservation" in contrast to "conservation". There is nothing more unrealistic to farmers and ranchers than the prospect of preserving the landscape status quo "as is". Agriculture is a human activity that has altered the landscape for tens of thousands of years, and for farmers and ranchers, the more dynamic and adaptable term, "conservation", usually better fits their perception of what agricultural easements should be about.

Another basic tension is how to balance inevitable trade-off between economics and the environment. For farmers and ranchers who make their living from the land, economics comes first because it means short-term survival and long-term viability. For others, the other environmental resources like soil, water quality or wildlife habitat will take precedence. Finding a balance that is workable and sustainable is what agricultural easements are all about.

And lastly, there is an inevitable push and pull between an easement that provides flexibility to the landowner and certainty to the holder. For farmers and ranchers who have witnessed incredible change in agriculture in their lifetimes, it stretches credibility beyond the breaking point to think that we can draft an easement that will last unless it is flexible and can be adapted to future change.

Agricultural Conservation Easements

What are they?

We sometimes overlook the fact that in almost all states, conservation easements are a product of a specific state law that creates them-and provides for a special set of rules for their interpretation and enforcement.

Without getting into the gory detail that first year law students endured in their real property law classes, it is important to understand that conservation easements are negative covenants generally created by state law. The latter fact is critical because it is state law, and *not* the Internal Revenue Code, that will govern easements interpretation and enforcement. And the former is a legal reminder about limitations of conservation easements generally-they impose restrictions one uses like non-farm development and subdivision and not affirmative obligations to continue farming or ranching. In general, the conservation easement statutes enacted in most states eliminate all of the common law defenses to these “easements in gross” and provide legislative sanction for the conservation purposes that they are intended to protect.¹

What do they look like?

As was observed earlier, many agricultural easements evolved from publicly funded PACE or PDR programs and tended to be fairly short, simple and deferential to most agricultural uses and structures. By contrast, many land trusts tended to draft more complex, detailed easements in part because the easements were donated and needed to comply with the requirements of Section 170(h) of the IRC and its accompanying regulations in order for taxpayers to receive a charitable deduction, and in part because land trusts and other conservation organizations were as concerned with other conservation values as with the agricultural resources.

Over time, it appears that agricultural easements from the public and private sector are merging toward middle ground on issues like the purpose or purposes of the easement, structures, dwellings, subdivision, agricultural practices and rural enterprises. Some land trusts, like the Columbia Land Conservancy and Scenic Hudson in the Hudson River Valley of New York have actually created new template agricultural conservation easements because the traditional scenic/open space easement does not allow enough long-term flexibility for agricultural enterprises and market adaptations necessary to sustain the working landscape. Of course, for federal income tax deduction purposes, IRS requirements must be satisfied, but it has been noted on more than one occasion that the IRS has a three-year statute of limitations. Landowners and easement holders will be living with the easement for much longer.

Key drafting issues

Purpose

Any easement’s purpose clause becomes its “touchstone” for future readers. A clear statement of purpose should provide a standard for future interpretation. Over time, through easement monitoring and discussions with the present (and future) landowners, the easement language will be revisited by both the holder and the landowner to determine whether future use continues to be consistent with its stated purpose as set forth in the purpose clause.

Not surprisingly then, agricultural easements will state clearly that working agriculture is the primary purpose. Some, including American Farmland Trust’s standard easement, include agricultural viability in the purpose clause to recognize the economic link in the working lands equation.² Other

¹ See generally, Gustanski and Squires, *Protecting the Land: Conservation Easements, Past, Present and Future*, Island Press, 2000.

purposes clauses focus exclusively on the conservation of productive agricultural land and leave the obvious connection to agricultural viability implicit rather than explicit.

Other purpose clauses create a hierarchy of purposes with agriculture as the primary purpose and other stated purposes, including scenic or natural feature, as secondary. These easements explicitly recognize and reference other important attributes of agricultural land, but acknowledge the potential for tension and even conflict between multiple conservation purposes.

Still other easements have dual, or sometimes even multiple purposes without any explicit mechanism to reconcile potential tensions or conflicts. The dual-purpose easement used in the New York City Watershed by the Watershed Agricultural Council in its easement program utilizes performance standards relating to the form, location and density of development and adherence to an approved whole farm conservation plan to address this tension. However, many other easements, drafted to comply with the Internal Revenue Code requirements in Section 170(h), will use a “shotgun” approach that lists “open space”, “natural”, “scenic” and “agricultural” values of the property as multiple purposes. This approach presumes that all of the above values are some how compatible and reconcilable. While in some circumstances this is certainly true, many other cases point to potential for conflict between these values as agriculture evolves in a new century. Interestingly, many of the easements with single purpose agricultural protection clauses are found in state or local purchase programs, programs that evolved unaffected by 170(h) until the growth of the land trust movement in the 1980’s and 1990’s.

Regardless, the purpose clause will serve as an important indicator about how commercial agriculture and the business of farming and ranching are likely to fare under future interpretation of the various easement clauses that follow in the conservation easement document.

Definition of Agriculture and Farming Practices

Agricultural easement drafters frequently strive to define current and anticipated agricultural practices to avoid confusion about whether a current or future farming practice is permitted. From a farmer’s or rancher’s perspective, this issue of what is agriculture, or more importantly, who decides what is agriculture, can conjure nightmare scenarios of a “fixed” definition of agriculture into the future, or worse, a subjective or arbitrary determination by the easement holder.

As a result, agricultural easements generally attempt to define “agriculture” in broad terms that presume an evolving definition of agriculture and changes over time. Generally structured in a clause separate from the Purpose Clause, an Agricultural Definition section can vary from including a broad and non-inclusive list of permitted uses to stating a definition of agriculture as determined by state law that will be modified over time to reflect changes in agriculture. The Vermont Land Trust has recently decided to utilize a consistent set of guidelines to help them make determinations about the definition of agriculture in their easement. And they expect to periodically revisit the guidelines to ensure that the guidelines reflect the changes in agriculture that will inevitably occur over time.

Similarly, agricultural easements usually incorporate standards that define acceptable agricultural practices in ways that the agricultural community trusts. These standards are by their nature flexible; they are often defined within state or federal programs (such as the Natural Resources Conservation Service or local soil and water conservation districts) that are updated periodically to reflect changes in agricultural best management practices (“BMP’s”). By utilizing state-defined or federal standards, the easement holder may avoid difficult discussions with farmers or ranchers about “who best knows” how to farm.

Agricultural easements are some times silent about standards for farming practices, relying on

² The AFT easement purpose clause states: “The primary purpose of this Easement is to enable the Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity. No activity which shall significantly impair the actual or potential agricultural use of the property shall be permitted. The agricultural soils and agricultural viability and productivity of the Property are collectively referred to herein as the “agricultural conservation values of the Property.”

other on-going farm/conservation management programs such as NRCS's "Conservation Plans". Incorporating detailed land management requirements into agricultural easements also has serious ramifications for the long-term stewardship obligations of the holder and need to be considered carefully. As with other specific easement clauses, each holder will need to decide whether it has the knowledge and resources over the long term to evaluate and enforce any specific farming practices or standards. Local NRCS and soil and water conservation district offices can serve as technical advisors about conservation plans and how they might be incorporated into an agricultural easement.

Agricultural Structures

During our discussions with farmers and ranchers about agricultural easements, we have found that one of the most critical and potentially contentious issues is the amount of flexibility they will have to add or alter agricultural structures, including feedlots and barnyards. Across the country, agricultural easements recognize the necessity of providing maximum flexibility for agricultural buildings (and in most jurisdictions, local governments do as well).

The most common easement language allows farmers to construct, modify or demolish any farm building necessary to the farm operation without prior permission from the easement holder. This approach, followed in most of the agricultural purchase of development rights programs, acknowledges that the farmer or rancher knows what is most important for his or her agricultural operation and needs to act accordingly. It also highlights the importance of the purpose clause and the definition of agriculture since each will affect what is actually an "as of right" structure.

However, as land trusts get more involved in farmland protection and as existing farmland protection programs attempt to address multiple conservation values as well as agricultural resources, other techniques are being utilized. Some farmland protection programs, and many land trusts, require some kind of prior permission for construction of agricultural structures. Others blend "as-of-right" construction within a large building envelope (where the majority of agricultural structures and housing will be located in the future) and only require advance permission for any construction outside the designated building area. In such easements, the landowner can build, enlarge, modify or demolish any agricultural structure within the building envelope without permission. Farm structure outside of the building envelope would be allowed if they meet performance standards set forth in the easement (For example, the holder will grant permission if the structure does not unnecessarily impact important soil resources.)

Another approach establishes a threshold at which construction of agricultural structures of a certain size outside of the building envelope is permitted if they are necessary for the agricultural enterprise and are consistent with the purpose of the easement; prior approval is required for larger buildings under this approach. Surface coverage limits (usually as a percentage of the total easement acreage), while less common, may also be used as they are in the Pennsylvania farmland protection program. Recently the Natural Resources Conservation Service (NRCS administers the federal program) proposed guidelines for impervious surface limits (including residential buildings, agricultural buildings and other paved areas like feedlots and barnyards) of 2 percent because it concluded that extensive impervious surfaces have the potential of limiting future agricultural uses and create the potential for extensive erosion. For perspective, this proposed guideline would limit impervious surfaces to a total of 5 acres on a 250-acre farm.

The proposed NRCS guideline highlights the point that restrictions on buildings and other impervious surfaces will have a significant impact on farmland protection programs because they will affect whether agricultural landowners will participate in the first place; and they will affect what acreage is included, or not, in the proposed easement.

We believe that it is critical for agricultural easement drafters and program managers to work with their agricultural community to evaluate the best way to allow for construction necessary for current and future agricultural enterprises so that agricultural easements are not viewed as overly restrictive "straightjackets" for future farmers and ranchers as well as evaluate their long term organizational capacity as easement holders.

Residential Structures

While agricultural easements by necessity allow for farm employees housing necessary to conduct the agricultural operations (as determined by the farmer or rancher and in accordance with local zoning), they vary in their treatment of residential structures that are not necessarily designated for farm workers (such as the principal farm house).

Agricultural easements attempt to minimize land fragmentation and future farmer/neighbor conflicts by allowing only a few future non-farm employee residences on the property. Limiting land fragmentation is probably one of the most important functions of an agricultural easement, and probably the restriction that will be truly enforceable over the long term. Consequently, the location of these future houses is very important and should factor in wind dispersal, of noise, chemicals, dust and smell, in addition to land fragmentation.

Based on our review of agricultural easements there are three basic approaches to residential structures:

- Omit non-worker house sites from the easement. Survey out the future house sites, usually on a two to three acre lot that is large enough to support a septic system and a replacement system. Easement monitoring can be simplified with a clear delineation that no residential dwellings (other than farm employee housing) are permitted on the property.
- Include house sites within the easement, therefore ensuring that any non-residential uses would be prohibited.
- Create building envelopes large enough to allow for the residential structure and the establishment of a substantial farm operation with supporting buildings and structures – or expansion of an existing farmstead – on an as-of-right basis. Under this approach, the easement provides for a variety of uses within the building envelope (or “Acceptable Development Area”), including housing for the farmer, farm-based enterprises, non-farm enterprises, and housing for farm employees and /or family members as long they do not negative impact the property’s agricultural viability.

Under the last scenario, agricultural structures constructed outside of the building envelope generally require prior permission. The appropriate size of these building envelopes will vary based on the region’s agricultural activities; however, designating building envelopes that are too small will likely restrict future farming enterprises and undermine support for easements within the agricultural community and create pressure to amend easements in order to “loosen” an overly restrictive easement.

Subdivision

While provisions that govern subdivision of protected agricultural land vary, the primary issue underlying this particular restriction focuses on reducing the potential for land fragmentation that would render agricultural land unusable for a commercial agricultural enterprise.

An agricultural easement may create a performance standard that allows subdivision if it does not harm the property’s long-term agricultural viability or limit the size of the subdivision, based on the amount of land generally considered a viable farming unit, or limit the total number of permitted subdivisions. One factor is critical: what is deemed a viable farming unit today may be very different in the future. Requiring farms to remain in large acreages and/or to retain the traditional farmstead may create a long-term property tax burden that is unsupportable when profit margins are slim or nonexistent. Such a requirement might force a farmer or rancher to sell the entire operation as one large unit, rather than being able to divest unneeded acreage and retain an appropriate amount of acreage for their agricultural enterprise. For example, an agricultural producer may decide to focus on producing a niche product (like vegetables, herbs, flowers or small fruits) on the 15 acres of prime soils on the farm, and no longer wish to own and maintain (including paying the taxes) the other 200 acres of less productive pasture and woodlot on the farm. From an economic perspective, requiring 100 acres as minimum subdivision acreage may well force the sale of the entire farm unnecessarily.

In any case, farm support housing (housing and/or apartments for farm employees and family housing) should not be allowed to be subdivided as separate, stand-alone, residential properties unless those units are designated as “non-worker” house sites up front in the easement.

Rural Enterprises

Increasingly, agricultural easements recognize the importance of allowing diversification of the agricultural operation and/or other business enterprises in order to generate enough income to support the family standard of living or subsidize the agricultural operation if it is not profitable. The need for provisions that allow rural enterprises is more acute in areas where agricultural resources are more marginal and prospects for future viability of agriculture are more uncertain. While there are numerous twists to the rural enterprise clause, there are at least two basic approaches:

- Allow the rural enterprise as long as it is a subordinate business to the agricultural operation. This might entail part-time or off-season businesses such as bed and breakfasts, machinery repair or woodworking.
- Allow rural businesses to operate within the farm-building envelope. Such businesses may be directly related or completely unrelated to the production, processing or sale of farm products, and may include home offices, computer repair, day care, etc. These uses may require prior permission from the easement holder to ensure that the agricultural purposes and intent of the easement are not negatively impacted. Preventing subdivision of the building envelope controls potential land fragmentation.

Recreational Uses

Almost all agricultural easements provide for continued recreational use by the grantor including traditional rural recreational activities like hunting, fishing, trapping, snowmobiling, skiing, hiking and camping. In most cases, the landowner retains the right to use the property for such recreational activities as well as allow others to do so as well.

In addition to personal recreation use however, are the issues of commercial recreational activities (hunting and fishing leases, campgrounds, fee-based skiing and snowmobiling trail use) and permanent structures for recreational use (personal or commercial). Most agricultural easements significantly restrict the construction of large permanent recreational structures outside the approved building envelopes, whether the “use” is personal or commercial. Large camps or airstrips or golf courses could have a potentially significant impact on the agricultural resources of a particular farm or ranch and are usually either restricted or prohibited.

Commercial recreational use, separate and apart from any structures that might be built, raises the issue more akin to rural enterprises – is it the use per se, or the associated structures and their location that would negatively impact the agricultural resources. Just as rural enterprises provide a potential source of diversified income (in fact, commercial recreation may be more accurately characterized as one of the possible rural enterprises), the opportunity to benefit financially from commercial recreational opportunities like hunting and fishing leases, dude ranches and working farm vacations as well as snowmobile, skiing, horseback riding, hiking and mountain biking trails may be critically important to the future viability of a farming or ranching operation. The question really comes down to: what, if any, negative impact will there be on the agricultural resources?

Approvals

Some agricultural easements require the landowner to obtain prior approval for agricultural improvements and such permitted uses as farm stands, bunk silos, machine sheds and livestock barns. Not surprisingly, farmers and ranchers prefer minimal approval requirements to allow them to respond to changing markets, new technology, opportunities for construction cost-share assistance and costs of materials. When permission is required, most easements establish a default time period after which, if the holder does not respond in writing to the landowner’s request, permission is deemed granted. This allows the farmer or rancher the security of knowing that he or she will be able to make decisions and

take action within a reasonable length of time (often 30 to 60 days).

When permission for construction of agricultural improvements is required, easements should have language that requires the holder to state why it is denying permission and to provide the landowner with examples of possible remedies. In many cases, the criteria, and burden of proof, are clearly set forth in the easement – usually based on whether the proposed improvement would unnecessarily harm the property’s agricultural resources or agricultural productivity.

If prior approval is required by the easement, the holder should recognize the significant stewardship burden it is undertaking (as well as imposing on the landowner), and establish protocol to identify the decision-maker (board or staff) and a consistent process for handling requests (written requests, type of information needed, etc.). Timeliness of response and consistency of outcome will be critically important to making the approval process work. Just as with issues concerning farming practices, each holder will need to decide whether it has the knowledge and resources over the long term to evaluate and render decisions on requests that require prior approval, especially those requests involving agricultural improvements or subdivision for agricultural purposes.

Resource Protection Issues

Increasingly, easement holders are protecting other natural resources in agricultural easements, including wetlands, steep slopes, stream corridors, habitat areas and scenic view sheds. Obviously, one way to address these additional resource protection issues is to include them explicitly in the purpose clause and create a dual or multi-purpose easement. Because the other natural resources issues are usually only relevant to, or located on, a part of the entire property that is protected, many easement drafters will create specific “resource protection areas” that outline the particular resource at issue (a stream buffer or wetland area) spatially on a property map and impose additional use restrictions that will protect that resource (in some cases restricting or prohibiting agricultural use of an resource protection area entirely). Within each “use” area, the easement needs to be clear about whether agricultural uses are allowed and if so, under what conditions or limitations.

Some of the basic issues that need to be addressed up front include: what are the resource protection concerns? (vegetative buffer, soil disturbance, filter strip, habitat management, scenic vista); what is the primary purpose of the easement, easement program and easement holder? (agriculture, wildlife habitat, watershed protection, scenic views); what will the agricultural community support? (comfort level with additional use restrictions in certain areas); and what can the easement holder handle from a stewardship perspective? (complex easements increase stewardship and enforcement obligations dramatically). And lastly, are there other programs or approaches that are available to address particular resource management issues? In other words, is an agricultural easement the proper tool to protect wetlands or wildlife habitat or a scenic view?

Some of the typical use restrictions in resource protection areas range from limits on large structures and impervious surface areas to no buildings or structures to limited cultivation to no cultivation to active management for a particular resource management purpose (like maintenance of grass buffer strips or annual mowing of grassland bird habitat or burning for prairie grasses.)

Other Issues

While not an exhaustive list, the following issues frequently are on the table when drafting agricultural easements, and in most cases, should be addressed explicitly up front in the negotiating/drafting process.

- *Affordability* – Because one of the rationales for agricultural easements is that they help make farm and ranchland more affordable, the “estate” value issue is generating increasing attention. Restricted values that exceed the agricultural value will undermine the affordability of protected farms and ranches and make it increasingly difficult for the next generation of farmers and ranchers to own their land. The Massachusetts state farmland protection program (Agricultural Preservation Restriction “APR” as it is known) now includes an option to purchase at agricultural value in every agricultural easement purchase transaction in order to

ensure affordable resale values of agricultural land. And the Vermont farmland protection program is considering the development of a similar agreement for use in its program. Thus far, Massachusetts has not actually had to exercise its option, but its terms have served to deter “estate sales” and have facilitated transfers of protected land to commercial farmers. Linda – as we discussed, this is probably the most “expendable” for this audience.

- *Amendment* – Amendment clauses are included as a matter of course in agricultural easements. Notwithstanding the time and care spent on drafting flexible easements that encourage agricultural use, an amendment clause serves as an important “safety valve” or adjustment mechanism for both the landowner and the holder down the road.
- *Extinguishment of Development Rights* – Unless specifically desired as part of a transfer of development rights or development rights “bank”, any nonagricultural development rights are usually explicitly extinguished to avoid their unanticipated “use” in the future for density averaging or density bonus purposes. Such a clause also serves to reinforce the fact that, in most cases, farmland development rights agreements, or agricultural easements remove the future development potential from the land (thus justifying the very large amounts of funds often used to purchase those “rights”).
- *Mining* – For donated easements, mining can prove to be a challenging issue. Read literally, and construed strictly, Section 170(h) appears to prohibit any surface mining at all. However, most agricultural easement drafters have interpreted the regulations to allow very limited extraction of materials like stone, shale, sand and gravel for on-site use. For purchase programs, this is less of an issue because 170(h) does not come directly into play. And for very cautious drafters, active gravel or sand pits are simply excluded from the easement entirely. Subject to the site impact mitigation requirements set forth in the Treasury Regulations, subsurface mining is allowed. Given the number of existing subsurface gas and oil leases on agricultural land as well as future income opportunities for agricultural landowners, the Treasury Regulations take a very practical approach on this issue.
- *Termination/Extinguishment* – As with other conservation easements, the issue of termination by the parties (subject to court approval) or extinguishment by virtue of the exercise of eminent domain, is routinely addressed in agricultural easements, and usually in a similar fashion. Just as the Treasury Regulations articulate a standard based on the traditional property law doctrine of changed conditions³, most agricultural easements utilize a similar standard that requires a showing that the purpose (agricultural use) is impracticable and/or impossible (and not merely inconvenient.) However, with single purpose agricultural easements, the concern has been raised that it might be easier to extinguish the easement than if it had multiple or secondary purposes included. Without any precedent to guide us, it would certainly appear that such single purpose easements would be simpler, though not necessarily any easier, to terminate because of their singular focus.
- *Waste* – These clauses need to be carefully considered because common “catch-all” waste clauses can create headaches for farmers and ranchers from the outset. For example, if old farm equipment is considered prohibited “waste” or “junk”, any required clean-up could be cost prohibitive for a cash-strapped farmer or rancher. And of course, from an agricultural resource perspective, the question needs to be asked about whether such a restriction is even necessary. Many agricultural easements will draw a distinction between “waste” that is generated on the farm or ranch and other waste in order to avoid creation of new or expanded dumping or waste disposal areas on the property. Another emerging issue is whether on-farm composting of materials generated elsewhere is permissible under current definitions of agricultural operations in some states. I’d rank this as second on the expendability list, but after reading it again, I’d hate to have to cut it.

³ 26 CFR Section 1.170A-14(g)(6)

- *Water Rights* – While a critical to the future viability of many operations in the western part of the United States in particular, it is an issue that should be considered in the context of its relationship to the agricultural resources and productivity. In some areas, this issue may be more important to the future of the farm or ranch than any threat of development or land fragmentation. And the availability of water will certainly impact the type and intensity of agriculture in the future.

Inherent Limits of Conservation Easements

In addition to the basic organizational capacity questions that the holder (and landowner and his or her advisors) should ask, many of the drafting issues relate to the nature of agricultural easements, the tensions inherent in “working” landscapes and the limits of conservation easements generally as a resource conservation tool.

Probably the most fundamental tension in an agricultural easement is the trade-off between economics and the environment. While those of us who work in the field of agricultural and farmland conservation believe that the two are not necessarily mutually exclusive, we must be realistic and recognize that in many instances there will be some environmental impact from the working landscape of farms and ranches; and that farms and ranches will not survive without some type of economic return.

The tendency of some holders to dictate complex size and location requirements and use limitations for the construction of agricultural structures and agricultural operations serves only to reinforce this point. In fact, many of the drafting “tensions” in the agricultural easements result from the fact that the landowner and holder are often asking different questions about the impact of a particular paragraph or clause. Landowners are usually concerned with the impact on the agricultural business and the future economic viability of the farm or ranch; and holders are concerned about the impact of the structure or activity on the soils, or water quality, or wildlife or scenic view. We believe that very restrictive agricultural easements will prove more difficult to monitor and enforce over the long haul because of this fundamental tension. And ultimately, that will distract us from the ongoing larger issues of how we manage and use our agricultural lands in this country.

The second major tension in agricultural easements relates to the level of management restrictions or requirements that are integrated into the easement itself. It is nearly impossible to separate land use from land management because the latter can strongly impact whether the former is perceived as “good” or “bad”. Most agricultural easements incorporate some kind of management requirement in the form of general “best management practices” or “conservation plan”, but do not require much detail in terms of what that would really mean in practice. Critics of this approach desire a higher level of accountability and/or performance standard to ensure that the best management practices or conservation plan is really meeting its objectives. The challenge with agricultural easements as the tool to achieve this result is that they are designed to be “perpetual” and somewhat cumbersome (by design) to amend or modify. We believe the better approach is to accept the limitations of easements as a land management tool, and to either rely more short-term management agreements, or to simply recognize that outright ownership is required for the desired management and protection of some kinds of natural resources.

Conservation easements, agricultural or otherwise, will only deliver on the promise of perpetuity if the holders of these easements can monitor and enforce them over time. The challenge with agricultural easements is not only to draft them to allow and encourage agriculture, but to monitor and enforce them in similar fashion.

Conclusion

We have found that there are no better advocates for agricultural land conservation than the

farmers and ranchers who are living, and working, with agricultural easements – and if these easements are drafted to protect soil resources, allow for the evolution of agriculture as an economic enterprise and diversify and allow for other ways to generate income if necessary. In general, these easements are farmer and rancher oriented (not a bad test for any agricultural easement), written with the knowledge that farmers and ranchers, perhaps more than any other group of landowners, must make countless decisions on a daily basis about how they work the land and respond to the tight economics of agriculture and unpredictable weather.

In addition to conservation, agricultural easements, especially purchase programs, can help resolve difficult estate planning issues⁴ and provide capital for reinvestment in the farm or ranch business.⁵

Change is inevitable in agriculture; and agricultural easements must be drafted to accommodate those changes, whether we like them or not. Otherwise, we run the risk of making agricultural easements irrelevant in the coming century.

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⁴ For a more detailed discussion of conservation options in estate planning, see Cosgrove and Freedgood, *Your Land is Your Legacy*, 3rd ed., American Farmland Trust, 2003.

⁵ See, Cosgrove and Ferguson, *From the Field: What Farmers Have to Say About Vermont's Farmland Conservation Program*, American Farmland Trust, 2000.