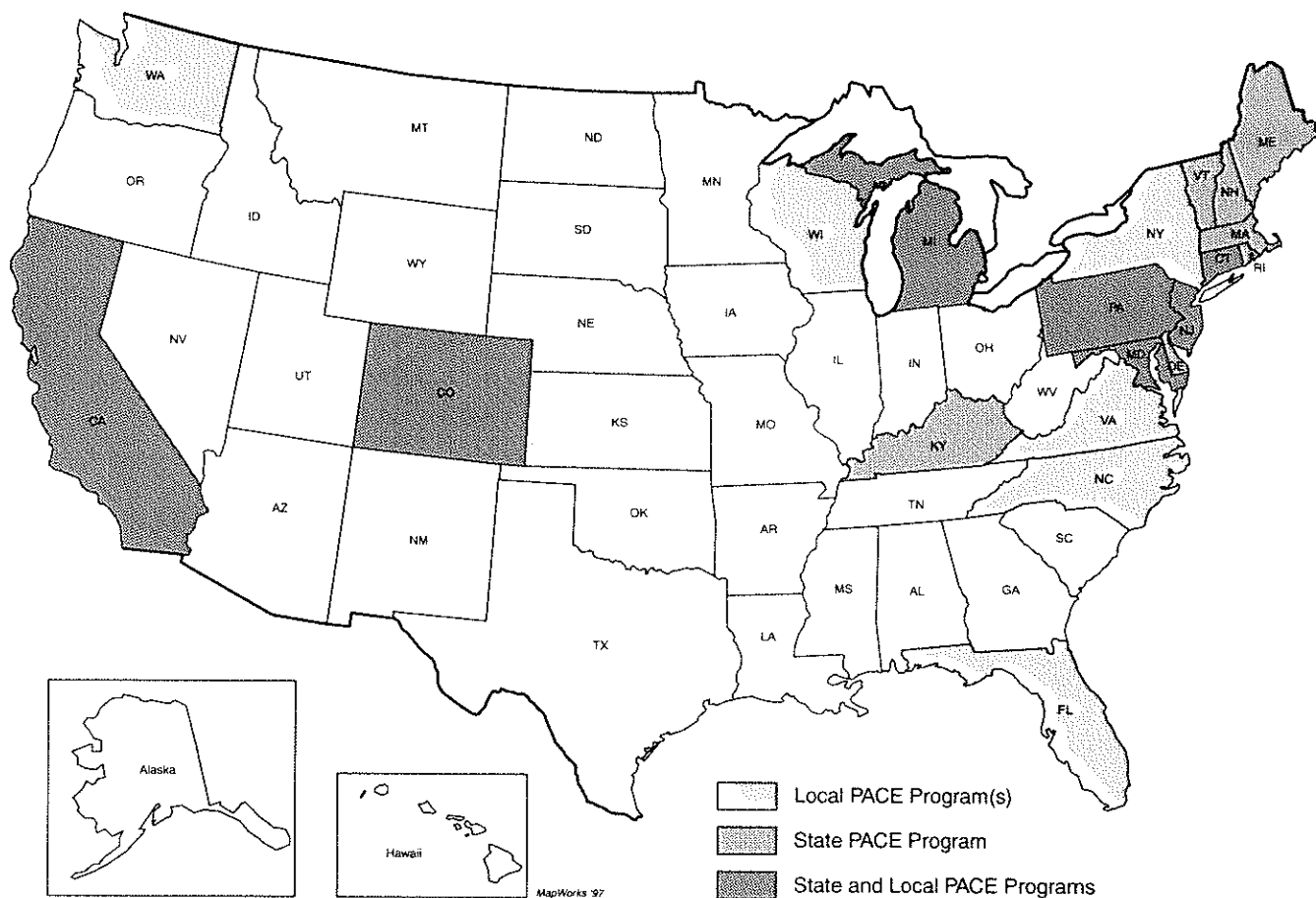


# SECTION ONE: FARMLAND PROTECTION TOOLBOX

## CHAPTER 3: PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

MAP 3.1: STATES WITH PACE PROGRAMS, 1997





The purchase of agricultural conservation easements (PACE) refers to programs that pay property owners to keep land available for agriculture. PACE is known as Purchase of Development Rights (PDR) in many locations (see glossary for terms).<sup>\*</sup> Typically, landowners sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land for agriculture and the value of the land for its “highest and best use,” which is generally residential or commercial development.

BRIEF DESCRIPTION  
OF PACE

Legal covenants impose a conservation easement that “runs with the land,” prohibiting all future owners of the property from developing it—or using it in any manner that negatively affects its future agricultural viability—unless the document establishing the easement provides that the easement may be terminated for cause or at the end of a specified period of time. After selling an easement, the landowner retains all other rights of ownership, including the right to farm the land, prevent trespass, sell, bequeath or otherwise transfer the land to others. An agency or organization that buys an easement does not acquire the right to build anything on the land, but only the right and responsibility to prevent development.

PACE compensates landowners for permanently limiting non-agricultural land uses. PACE programs serve four principal functions that contribute to farmland protection:

FUNCTIONS AND  
PURPOSES OF PACE

- PACE prevents non-agricultural development that would effectively foreclose the possibility of farming. Because such development often conflicts with neighboring agricultural operations, PACE helps protect their economic viability as well.
- Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. The reduction in market value may also reduce property taxes and help prevent them from rising.
- PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. For example, the proceeds from selling agricultural conservation easements may be used to reduce debt, expand or modernize farm operations, invest for retirement or settle estates. The reinvestment of PACE funds in equipment, livestock and other farm inputs may also stimulate local agricultural economies.
- PACE gives communities a way to share the costs of protecting farmland with landowners. Non-farmers have a stake in the continuation of agriculture for a variety of reasons, including keeping locally grown food available and maintaining scenic and historic landscapes, open space, watersheds and wildlife habitat. PACE allows them to “buy into” the protection of farming and be assured that they are receiving something of lasting value. Landowners are given a financially competitive alternative to development as a means of cashing in a fair percentage of the equity in their land.

<sup>\*</sup> In practice, there is no difference between PACE and PDR. Both terms refer to programs that use public money to prevent farmland from being converted to non-agricultural use. As a matter of terminology, some states, such as Massachusetts, do not allow farmland protection programs to purchase easements. Instead, the state pays for a negative restriction on development. In California, on the other hand, the state and local governments buy easements, because farmland protection programs cannot actually buy “development rights.”

BENEFITS

BENEFITS AND  
DRAWBACKS OF PACE

- PACE protects farmland permanently, regardless of who owns it.
- Participation in PACE programs is voluntary.
- PACE can be implemented by state or local governments, or by private organizations.
- PACE provides farmers with cash, helping them address the economic challenges of farming in urban-influenced areas.
- PACE programs can protect ecological as well as agricultural resources.

DRAWBACKS

- PACE is expensive.
  - PACE can rarely protect enough land to eliminate development pressure on unrestricted farms.
  - Purchasing easements is time-consuming.
  - Monitoring and enforcing easements requires an ongoing investment of time and resources.
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BRIEF HISTORY

TRENDS IN PACE

Suffolk County, N.Y., pioneered the purchase of easements as a farmland protection strategy. Suffolk, which occupies the eastern end of Long Island, has been the highest-grossing agricultural county in New York for more than two decades. The process of designing the county PACE program and winning political support for a \$21 million bond to fund it started in 1974. Funds were appropriated in 1976, and the first deals were closed in 1977.

Following Suffolk County's lead, Maryland and Massachusetts authorized PACE programs in 1977, Connecticut in 1978 and New Hampshire the following year. One impetus for these programs was an increased concern for regional food security in the wake of gasoline shortages and fears of an "energy crisis." Growing concerns about the loss of open space also contributed to the enactment of PACE programs. King County, surrounding Seattle, Wash., began the first PACE program in the West during the same period.

The 1981 U.S. Department of Agriculture's National Agricultural Lands Study reported on these early PACE efforts. The publicity may have been partly responsible for the expansion and diffusion of PACE during the 1980s: Rhode Island (1981), New Jersey (1983), Vermont (1987), Maine (1987) and Pennsylvania (1987) authorized programs during this period. California's Marin County inaugurated an innovative program in 1980 by partnering local

government with a private land trust. Encouraged by the success of earlier programs, specific PACE authorizing legislation has been adopted during the 1990s in Delaware (1991), Kentucky (1994), California (1995) and Michigan (1996).

Local PACE programs also continued to expand during this period. Forsyth County, N.C., created a PACE program in 1986. In 1987, Montgomery County, Md., adopted PACE to complement its successful transfer of development rights program. Montgomery was followed closely by Howard, Carroll and other Maryland counties that wanted to supplement the state's program. California voters passed a statewide bond referendum in 1988, which provided funds for local PACE programs in Marin, Monterey, Sonoma and other counties. Since then, other local jurisdictions around the nation have started PACE programs, among them Peninsula Township, Mich. (1994), Pittsford, N.Y. (1996), Virginia Beach, Va. (1995), Branford, Conn. (1996) and Skagit and Thurston Counties, Wash. (1996). Tables 3.1 and 3.2, pps. 86 and 87 include information on state and selected local PACE programs.

TABLE 3.1: STATE PACE PROGRAMS, 1997

State	Year of Inception	Acres Protected	Farms Protected	Funds Spent To Date	Funding Source
California	1995	0	0	\$0	State appropriation, FPP
Colorado	1994	1,878	3	\$610,000	A portion of lottery proceeds, FPP
Connecticut *	1978	25,566	169	\$74,835,100	State bonds, FPP
Delaware	1991	15,961	65	\$18,950,000	Appropriations from special capital fund, FPP
Kentucky	1994	0	0	\$0	Governor's Capital Construction Fund, FPP
Maine	1987	464	2	\$430,000	State bonds
Maryland *	1977	128,031	884	\$140,637,690	Agricultural transfer tax, portion of real estate transfer tax, FPP
Massachusetts	1977	39,334	430	\$95,000,000	State bonds, FPP
Michigan	1994 *	79	2	\$709,600	Withdrawal penalties from state circuit breaker program, FPP
New Hampshire					
APP	1979	5,500	35	\$5,100,000	State appropriations
LCIP	1987	6,232	22	\$5,349,008	State bonds
New Jersey *	1983	34,972	234	\$167,826,221	State bonds, FPP
Pennsylvania	1988	91,813	730	\$186,000,000	Cigarette tax, state bonds, county allocations, FPP
Rhode Island	1981	2,429	31	\$13,199,525	State bonds, FPP
Vermont *	1987	54,466	162	\$29,071,276	State bonds, real estate transfer tax, Farms for the Future Pilot
<b>TOTAL</b>		<b>406,725</b>	<b>2,769</b>	<b>\$737,718,420</b>	

\* First agricultural conservation easement purchase.

x Funds spent to date does not include administrative costs.

◆ Figures as of 8/1/96. Vermont received \$1,000,000 from the FPP in the fall of 1996.

APP: Agricultural Preservation Program.

LCIP: Land Conservation Investment Program. The program was terminated in 1993.

FPP: Federal Farmland Protection Program.

Programs in Colorado, Maine and Vermont are multi-purpose programs; the figures in the table represent easement acquisitions on farmland.

Programs in California and Colorado do not purchase easements. Instead, these programs provide funding to local governments and land trusts.

TABLE 3.2: SELECTED LOCAL PACE PROGRAMS, 1997

Jurisdiction	Year of Inception	Acres Protected	Farms Protected	Funds Spent To Date	Funding Source
<b>California</b>					
Marin County	1980	25,504	38	\$17,000,000	State bonds, 10% of unallocated county funds
Sonoma County	1990	22,850	60	\$34,000,000	.25% sales tax, state bonds
<b>Colorado</b>					
City of Boulder*	1984*	1,092	6	\$6,833,732	Sales tax
<b>Florida</b>					
Green Swamp Land Authority	1994	12,826	22	\$10,500,000	Appropriations from state agencies and a water management district
<b>Michigan</b>					
Peninsula Township	1994	724	10	\$1,253,000	Property tax increase, state grants. FPP
<b>New York</b>					
Southampton	1980	765	19	\$5,640,000	Municipal bonds, FPP
Southold*	1986	627	24	\$5,010,000	Property tax increase
Suffolk County	1974	5,568	139	\$26,000,000	Municipal bonds, FPP
<b>North Carolina</b>					
Forsyth County	1986	1,236	20	\$1,869,965	County budget reserve, FPP
<b>Pennsylvania</b>					
Buckingham Township	1996	137	3	\$1,100,000	Municipal bonds
<b>Virginia</b>					
Virginia Beach	1995	48	1	\$267,016	Property tax increase, cellular phone tax
<b>Washington</b>					
King County	1979	12,691	209	\$54,113,724	Municipal bonds, FPP
San Juan County	1990	670	5	\$1,419,401	Real estate transfer tax
<b>Wisconsin</b>					
Dunn	1996	174	1	\$260,000	Property tax increase
<b>TOTAL</b>		<b>84,912</b>	<b>557</b>	<b>\$165,266,838</b>	

\* First agricultural conservation easement purchase.

x Funds spent to date does not include administrative costs.

♦ Figures as of 8/1/96. Southold received \$100,000 from the FPP in the fall of 1996.

FPP: Federal Farmland Protection Program.

Boulder's Open Space Department is a multi-purpose program that also purchases land in fee; the figures in the table represent easement acquisitions on farmland.

At this writing, several states, including Illinois and Ohio, are actively considering the adoption of PACE programs. Arizona, North Carolina, West Virginia and Wisconsin have PACE enabling legislation, but have not yet adopted programs. These and other states may be encouraged by the Federal Agricultural Improvement and Reform Act of 1996, known as the "1996 Farm Bill," which authorized \$35 million in federal matching funds to assist state and local PACE programs.

#### ACCOMPLISHMENTS

PACE programs have achieved a noteworthy track record during the past two decades. As of May 1996, 11 states had passed legislation creating statewide PACE programs. An additional four states authorize and provide funding to local PACE programs. Collectively, state and county programs have protected 490,967 acres of farmland, investing more than \$750 million—an average of \$35 million a year. Connecticut, Maryland, Massachusetts, New Jersey, Pennsylvania and Vermont have mature PACE programs that account for more than 75 percent of all the acreage protected. Maine, New Hampshire, and Rhode Island have operated less active programs to which fewer resources have been committed, and California, Colorado, Delaware, Kentucky, Michigan and New York have up-and-coming PACE programs that are on the verge of attracting significant funding. After 20 years of activity at the state and local level, Congress approved limited federal matching funds for PACE in the 1996 Farm Bill.

In most states, farms protected by PACE tend to be clustered in areas where the land is of superior quality, the community has been especially active in trying to protect its agriculture, or both. In Massachusetts, for example, the fertile Connecticut River Valley region is a target area. Most of the farmland protected by the Commonwealth of Pennsylvania is concentrated in Lancaster, Chester, Berks and other southeastern counties that account for almost half of the state's total agricultural production. In California, Marin and Sonoma Counties, north of San Francisco Bay are the center of PACE activity, with some purchases along the coast in spectacular agricultural areas like the Salinas Valley, where three crops of vegetables a year are commonplace.

#### CHALLENGES

Even the most active state PACE programs are unable to keep up with farmer demand. A recent study found that for every landowner who sold easements to state or local programs in 1995, six other landowners had to be turned away for lack of funding<sup>1</sup>. Though some of them will be able to sell easements in subsequent years, there is a limit to how long many landowners can wait. The states with the most active PACE programs collectively lost three times as much prime farmland, and 10 times as much other agricultural land, as they protected with PACE from 1982 to 1992<sup>2</sup>.

Meanwhile, a new challenge is emerging for the older PACE programs. Massachusetts, Connecticut, King County, Wash., and Suffolk County, N.Y., report that some restricted properties are being purchased as estates by wealthy individuals who do not intend to farm the land on their own or, in some cases, keep the land in agriculture at all. This trend raises serious policy concerns for PACE programs in the long term.



While a PACE property which is resold as an estate may be technically available for agriculture in the sense that it is not covered with houses, once the value of the land increases beyond its agriculture value, it is less likely that a commercial farmer will be able to buy it. Owners of these “PACE estate farms” may rent their land to commercial farmers or continue to farm it themselves, but the conversion of commercial farms to estates raises troubling social questions: Does it matter who owns the land as long as it is farmed? What if the land is available for agriculture in the future but is not currently farmed? If a commercial dairy farm is converted to an estate that is kept in hay, has PACE achieved its purpose? Should public funds be used to subsidize the purchase of rural estates?

Administrators of the Massachusetts Agricultural Preservation Restriction (APR) Program have come up with an innovative strategy to keep restricted properties from being resold as estates. Since 1995, covenants imposed by the program give the state an option to purchase restricted properties at their agriculture value. The state may assign these options to farmers who wish to purchase the land. This provision is expected to deter new landowners from building estate houses or other non-agricultural structures on restricted properties, because it will prevent them from recovering the cost of their investments at resale. (See Appendix D, p. 108 for sample easement language reserving an option to purchase protected land at its agricultural value).

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#### ISSUES TO ADDRESS IN DEVELOPING A PACE PROGRAM

The ability of PACE programs to achieve their objectives depends on how programs address several core issues:

- What kind of farmland to protect, which areas to target and how to set priorities?
- What restrictions to put on the use of the land?
- How much to pay for easements?
- How to raise purchase funds?
- How to distribute state funds among local jurisdictions?
- How to administer PACE programs?
- How to monitor and enforce easements?

An analysis of how current programs have addressed these issues reveals their strengths and weaknesses and offers guidance to jurisdictions contemplating the adoption or improvement of PACE programs. State and local programs have slightly different roles to play and must be evaluated accordingly.

Land use is regulated at the local—not the state—level, and local governments have the direct power to make decisions about the future of their communities. Comprehensive planning can ensure that easements are purchased in areas where agriculture is most likely to persist and thrive. Local governments may also elect to protect additional resources with PACE programs, such as scenic landscapes and wetlands. Property owners are accustomed to dealing with their local governments on land-related issues, and town and county PACE programs can

#### ISSUES AND OPTIONS

offer their residents a timely, financially competitive alternative to selling land for development. County and municipal PACE programs should be evaluated in light of how well they protect farmland at the local level, thereby effectively helping agricultural producers resist the pressures of urbanization.

In New England, state-run PACE programs have performed many of the same functions as local programs. But PACE programs in states with strong county governments perform somewhat different roles. One of these functions is to empower local communities to implement PACE programs according to their individual needs. States can use their superior financial resources to channel funds to localities, leaving counties and towns to make decisions about purchase priorities and program administration. Decentralization of decision-making allows PACE programs to be responsive to the needs of landowners at the local level. However, state governments are in a better position to determine the relative importance and vitality of agriculture in various localities and regions. Many states establish priorities and distribute funds accordingly. In fulfilling these somewhat contradictory roles, state programs must strike a balance between local control and broader statewide priorities.

#### DESCRIPTIVE ANALYSIS OF PACE PROGRAMS

##### **What kind of farmland to protect, which areas to target and how to set priorities?**

Few, if any, jurisdictions have enough money to purchase easements on all their farmland. Therefore, PACE programs set standards that specify what kind of farmland to protect and what priority to give individual parcels of land. Programs identify farmland protection objectives and priorities by applying criteria, identifying targeted land on maps, or both.

Typically, states establish minimum or screening criteria for farmland quality. In Pennsylvania and Maryland, the state PACE agency certifies local programs that use these guidelines. To win certification, counties must demonstrate that they have addressed the issue of land quality. In smaller states, such as Massachusetts, Connecticut and Delaware, the state PACE agency sets its own criteria for purchases.

At the local level, some jurisdictions identify specific agricultural production zones where PACE purchases will be made. These zones generally correspond to areas designated in comprehensive land use plans where agriculture is the preferred use and development is discouraged or prohibited. These local map-based approaches to establishing PACE objectives are reinforced in some states, among them Pennsylvania, Maryland and California, that require PACE purchases to be consistent with local land use plans.

The issue of setting priorities is another matter. Priority criteria are used to determine which landowners will receive the first offers to purchase easements. The predictability of receiving an offer, as determined by such criteria, often plays an important role in landowners' decisions about whether to develop or protect their land. In practice, state and local programs often use the same criteria for screening and setting priorities. An emerging trend, however, is illustrated by innovations in Delaware, where the state PACE program is using a computerized geographic information system (GIS) to establish "strategic" statewide farmland protection priorities. Other jurisdictions use point systems to select and rank applications to PACE programs. (See Appendix E, p. 111 for a sample point system for ranking PACE applications.)

Among the factors most commonly used to establish PACE objectives and priorities are:

*Measures of farmland quality such as soil classification or crop yields*

Soil is the basic resource of agriculture, but not all soils are equally good for farming. Most PACE programs target farms with soils that are the most productive, versatile or unique in their crop-producing capability. USDA's Natural Resources Conservation Service maintains detailed soil maps for virtually every important farming area of the nation, making it relatively simple to develop screening and priority criteria based on soil classification. Maryland, for example, requires that half the acres of PACE farms have Class I-III soils, the best in the state. Pennsylvania has a similar standard, and also requires that crop yields equal or exceed the county average. In addition, applications to Pennsylvania's PACE program are rated on the use of agricultural best management practices to control nutrients and prevent soil erosion.

Many programs at both the state and local level have point systems for determining PACE priorities in which soil capability is an important factor. Connecticut awards up to 20 points (of a possible 100) to farms with a high percentage of prime and statewide-important soils. Some programs use Land Evaluation and Site Assessment (LESA)—a numeric system of rating farmland quality—for this purpose.

Delaware used a GIS composed of a series of six data "layers" to develop the statewide Agricultural Lands Strategy Map. Each layer contains information on a different factor: soil quality, sewer availability, land use/land cover, the percentage of each area devoted to agriculture, the level of economic investment in agriculture in a given area, and the presence of important natural resources such as wetlands and wildlife habitat. Individual parcels of land were given a score for each factor, and the layers received different "weights" according to their importance; soil quality received the highest weight. Scores for each layer were multiplied by the layer weight. The layers were then superimposed, and the six separate scores for each parcel were added. The highest-scoring areas in each county appeared on the final Agricultural Lands Strategy Map in dark green. These green areas receive the highest priority for the state PACE program.

*Farm size*

Many states require that farms be of a certain minimum size to qualify for PACE. Maryland rarely purchases easements on farms of less than 100 acres. Pennsylvania generally will not purchase easements on less than 50 acres, although it will make an exception for farms that are at least 10 acres and are used to produce specialized crops unique to the area or are adjacent to a previously protected farm. Connecticut's scoring system for PACE applications awards more points to larger farms. California sets no minimum acreage, but its law specifies that farms must be large enough to remain economically viable. The point systems used by some states and localities to establish PACE priorities often favor larger farms, on the theory that they are the most commercially viable. Large minimum farm size may not, however, be an appropriate criterion in some urban-influenced areas, where small, intensive operations such as nurseries and vegetable farms are more profitable than extensive grain or livestock operations.

*Strategic location of farms*

The desirability of real estate, it is said, is determined by three key factors: location, location and location. Though the location of a farm is not the only important criterion for purposes of establishing PACE objectives and priorities, it is certainly a critical one.

Generally, states and localities protect farms that are neither too close to urban development to remain agriculturally viable nor so far from urban areas that there is little risk of their development. One of the best examples of this balancing act is the Pennsylvania PACE mandate to target “areas...devoted primarily to agricultural use where development is occurring or is likely to occur within the next 20 years<sup>3</sup>.” Montgomery County, Md., gives preference to and pays higher prices for farms within one-quarter mile of its urban growth boundary. This guideline serves two purposes: It targets the landowners most tempted to sell land to speculators and erects a legal and economic barrier to possible water and sewer extensions into the county’s designated Agricultural Reserve.

Other jurisdictions have similar approaches. For example, Connecticut gives preference to farms that are surrounded by other farms rather than subdivisions. Maryland and California state programs favor farms that are located within master-planned agricultural protection zones. Maryland, Pennsylvania and Delaware buy easements only on farms that are enrolled in an agricultural district. Many states try to buy easements on farms that are close to land already protected by PACE or conservation easements. Again, a LESA system can be used to evaluate the location as well as the quality of farmland for purposes of setting PACE priorities.

*Environmental, cultural or scenic qualities: multipurpose PACE programs*

Though environmental, cultural and scenic qualities of farms are not necessarily vital to farm survival, these features are often of foremost importance to the general public that pays for PACE programs. All other factors being equal, superior natural or cultural resources on a farm, such as wetlands or an historic cemetery (which an easement could protect), could make the difference in acquisition priority. Several PACE programs take such criteria into account. California, for example, considers the extent to which each proposal meets “multiple natural resource conservation objectives, including, but not limited to, wetland protection, wildlife habitat conservation and scenic open-space preservation<sup>4</sup>.” Adams, Chester and Lancaster Counties in Pennsylvania all award points to farms that have or are adjacent to historic sites or exceptional environmental resources. Vermont has a unique multi-purpose program designed to protect farms and natural areas and provide affordable housing.

### Vermont Housing and Conservation Board: protecting Vermont's quality of life

Vermont is one of the nation's most rural states. Farms and forests define its landscape, and many residents still depend on the land for their living. The state's pastoral beauty is one of its primary attractions to tourists, who spent more than \$2.12 billion in Vermont in 1996<sup>5</sup>. During the 1980s, however, economic prosperity in New York and southern New England fueled demand for country homes in Vermont, resulting in pressure to develop farmland and forests. Houses sprang up on the edges of dairy farms along Lake Champlain and atop mountain ridges. At the same time, rising property values made it difficult for many low-income Vermonters—including farm employees—to compete in the housing market.

In 1986, a coalition of conservationists and housing advocates proposed an innovative solution to these problems: a fund that would finance low-income housing projects and protect important agricultural and resource lands. In 1987, the Vermont legislature approved the creation of the Vermont Housing and Conservation Trust Fund, stating that the "dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands are of primary importance to the economic vitality and quality of life of the state<sup>6</sup>."

The fund is financed through general appropriations and administered by the Vermont Housing and Conservation Board (VHCB), a quasi-public agency that makes grants to state agencies, municipalities and nonprofit organizations for the purposes of providing affordable housing and purchasing easements. Between 1987 and 1996, VHCB funded the acquisition of easements on 47,000 acres of farmland, conserved an additional 45,000 acres for wildlife habitat and recreation and financed the development of affordable housing for more than 8,000 Vermonters<sup>7</sup>.

Generally, purchases of agricultural conservation easements are made by the Vermont Department of Agriculture or the nonprofit Vermont Land Trust or Upper Valley Land Trust. Important resource lands are conserved by state natural resource agencies or The Nature Conservancy, and grants for housing projects are given to community land trusts, community development corporations and other social service organizations. Sometimes, however, a project fulfills more than one goal.

In the town of Addison, on the southeast shore of Lake Champlain, VHCB worked with the Vermont Department of Agriculture, Food and Markets, the state Department of Fish and Wildlife and The Nature Conservancy to protect more than 800 acres of farmland and wetlands. Purchases of easements on three parcels protected working dairy farms from imminent development and preserved public access to the Whitney and Hospital Creeks. In one case, the Vermont Department of Fish and Wildlife purchased buffers along the creeks in fee simple to provide public access. In another case, an agricultural conservation easement provided for public access to the creeks. All three easements in the area included a provision that prevents the landowners from selling exclusive hunting and fishing rights, thus keeping the land available for public use<sup>8</sup>.

The use of PACE to protect water resources and wildlife habitat is an emerging trend. In 1996, New York City approved a plan to purchase easements on farms that are more than 100 miles from downtown. The city is using PACE and working with the nonprofit Watershed Agricultural Council to prevent the development of subdivisions—and polluting septic systems—in its watersheds. In central Florida’s Green Swamp, PACE is protecting the scarce supplies of fresh water that lie beneath low-intensity cattle farms.

The California Agricultural Land Stewardship program, created in 1995, allows the state to make grants for land improvements on farms protected by agricultural conservation easements. Grants may be made for projects that:

- enhance the agricultural value of land protected by easements and promote long-term sustainable agricultural use, such as water supply development and revegetation of eroding streambanks;
- increase the compatibility of agricultural operations with sensitive natural areas;
- demonstrate new and innovative best management practices that have the potential for wide application;
- involve state and federal natural resource agencies; and
- are part of a coordinated watershed management plan<sup>9</sup>.

#### *Price of easements*

Price is important in determining whether easements should be purchased from sellers and for setting priorities among competing parcels. Because it is related to the quality and location of land, price cannot be ignored in establishing objectives and priorities. Ultimately, the price paid for easements must be attractive to owners of the land that the state or community wishes to protect.

Most jurisdictions will not pay more than the appraised fair market value of easements. Generally, easements on farmland under the most intense urban pressure will carry the highest prices, while rights to land that is more remote will be less expensive. This results in a tradeoff between protecting a lot of land farther from cities and fewer acres closer to them.

Some PACE programs, including Maryland’s state program and county programs in King County, Wash., and Suffolk County, N.Y., give priority to PACE applicants who are willing to discount the price of their easements. Many landowners do so to close the deal that, even at the discounted rate, can yield a significant cash return. Such “bargain sales” may also make the landowner eligible for a tax deduction.

#### *Local commitment to farmland protection*

Some state programs allocate additional funds to localities that bear some of the cost of acquiring easements. Maine gives preference to purchases involving either local government or private matching funds, and Massachusetts’ APR program allows the state to consider a municipality’s willingness to contribute funds in deciding whether to make an offer.

Pennsylvania and New Jersey both require local governments to bear part of the cost of purchasing easements within their jurisdictions, and New Jersey gives extra weight to PACE applications in communities where the local government has policies and programs to protect farmland.

To determine its funding priorities, the California PACE program measures the level of local commitment to farmland protection as evidenced by:

1. The general plan and related land use policies of the city or county;
2. Policies of the Local Agency Formation Commission (see glossary);
3. California Environmental Quality Act policies and procedures;
4. The existence of active local agricultural land conservancies or trusts;
5. The use of an effective right-to-farm ordinance;
6. Applied strategies for the economic support and enhancement of agricultural enterprise; and
7. Other relevant policies and programs<sup>10</sup>.

California's approach helps integrate PACE with other farmland protection techniques.

#### *Other factors*

Though location plays a critical role in whether farmland will be developed, other factors contribute to the risk, such as the tenure of the land and the financial circumstances of the landowners. Harford County, Md., awards extra points to PACE applications from full-time farmers who own their land. In Adams County, Pa., PACE applicants receive points for duration of farm ownership—the longer the farm has been in the family, the higher priority it receives. Farm families that derive a majority of their income from agriculture also receive extra points. Montgomery County, Md., pays more for easements on farms owned by families that earn income from agriculture. These criteria are designed to target PACE funds to family farm operations.

Connecticut has a scoring system for PACE applications that awards points to farms that are being offered for sale on the open market or are in estate probate. New Jersey also awards points for financial hardship. Many local PACE programs are administered by directors or boards composed largely of farmers who are very familiar with the agricultural community and apply an informal “needs” test in determining who shall receive first priority in selling easements. Care must be exercised in such circumstances to ensure that personality conflicts and politics do not prejudice the selection process and undermine the program's credibility.

A few PACE programs give priority to farmers who use good stewardship practices. Adams, Chester and Lancaster Counties in Pennsylvania and Harford County, Md., give credit to applicants who have an approved conservation plan.

Private land conservation organizations often “pre-acquire” farms on the open market, with the intention of reselling easements to a PACE program and the land to another farmer. While farms owned by land trusts are not generally at high risk for development, Pennsylvania and California laws explicitly stipulate that ownership by a private land trust does not disqualify land from PACE programs, and Vermont’s PACE program works closely with land trusts. These and other states encourage private organizations to work with landowners who might not be willing to sell an easement to a government agency or who need to sell an easement more quickly than a public program could act.

#### **What restrictions to put on the use of land?**

Agricultural conservation easements restrict non-farm uses such as residential subdivisions and commercial development. Most jurisdictions, including Maryland, New Jersey and Pennsylvania, allow subdivision of land for agricultural purposes, subject to some controls to ensure that the land will continue to be viable for commercial farming.

Some jurisdictions, including Maryland, Delaware and Pennsylvania, allow lots to be created for employee housing or children of the current owner, to help perpetuate the farming operation. Typically, these lots must be small (one to two acres is common), located on the least productive soils and otherwise pose minimal interference with agricultural operations. Massachusetts, in contrast, requires landowners to separate existing residences and any reserved building lots from land they enroll, to make protected farms less attractive as potential rural estates and to ensure that land will remain affordable to farmers. Suffolk County, N.Y., recommends that landowners reserve a building lot for future residential construction.

The Marin Agricultural Land Trust in Marin County, Calif., also allows landowners to reserve a building site on properties with easements. During the 1980s, King County, Wash., allowed landowners to reserve the right to develop houses on their properties. The price that they received for easements was reduced according to the value of the reserved lots. Since the sales were made, luxury houses have been constructed on several properties enrolled in the PACE program. At least 10 parcels, encompassing approximately 890 acres, have been subdivided<sup>11</sup>.

Many programs permit commercial development related to the farming operation on protected land. Connecticut allows the construction of “buildings for animals, roadside stands and farm markets for sale to the consumer of food products and ornamental plants, facilities for the storing of equipment and products or processing thereof...” Massachusetts allows the construction of permanent structures for agriculturally related retail sales with prior written approval. California’s PACE legislation states that easements shall not prevent the construction and use of structures necessary for agricultural production and marketing, including barns, machine shops, packing sheds, cooling facilities, greenhouses, roadside stands, livestock watering facilities, energy generation equipment and fencing, provided that the agricultural productivity of the land is not impaired. Easements may also provide for housing for farm employees and farm family members<sup>12</sup>.

In contrast, Suffolk County, N.Y., strictly limits commercial structures. Farmstands are permitted, provided they are no larger than 500 square feet, are designed for seasonal use and



are used primarily to sell products grown on the property<sup>13</sup>. Requests to build greenhouses are addressed on an individual basis<sup>14</sup>. In general, temporary greenhouses that can be easily disassembled are permitted, while those that require permanent foundations are prohibited.

If commercial uses are permitted on protected land, programs must be careful that the location, size and appearance of agricultural structures do not undermine public support of the PACE program by marring the beauty of the countryside or posing a nuisance to neighbors. When Connecticut allowed a large poultry production house to be built on one of the first farms it protected, its PACE program was set back several years by legal and political controversy.

Problems have also arisen from the construction of extensive equestrian facilities on farms protected by PACE. New Jersey permits barns, tracks and riding rings as an adjunct use to horse breeding facilities. Polo grounds are allowed as a non-commercial recreational use as long as the land remains available for agriculture. Permanent polo facilities such as grandstands and lights are prohibited<sup>15</sup>. In Southampton, N.Y., a state court rejected a request to construct a polo facility on land protected by Suffolk County's PACE program. The easement limited use of the land to agricultural production. The judge who decided the case found that "the breeding of horses for purposes other than actual sale is not agricultural production<sup>16</sup>."

When considering which commercial activities to allow, PACE programs need to strike a balance between allowing farmers to adapt their operations to be profitable and protecting properties from development that would compromise farming or make the land unaffordable for other farmers to purchase in the future. King County, Wash., addressed the issue of commercial uses by prohibiting landowners from covering more than 5 percent of their properties with non-tillable surfaces.

Most PACE programs do not restrict farming operations, although some require landowners to implement a soil and water conservation plan. Generally, there are two schools of thought on requiring soil and water conservation on farmland protected by PACE. One view is conservation should not be mandatory, since landowners can be trusted to take care of the land once it is restricted to farming, because its agricultural potential will decline if the soil is allowed to erode. The other view holds that if landowners can indeed be expected to take adequate care of the land, they should have no objection to demonstrating that they have implemented a conservation plan. Landowners who receive federal funds under the Farmland Protection Program must comply with a conservation plan, including less intensive use of highly erodible land.

Some jurisdictions offer at least the option of restricting farming activities to protect or provide public access to environmental amenities. For example, Montgomery County, Md., pays landowners an incentive bonus on top of the PACE purchase price if they agree to implement a conservation plan.

In 1996, the Vermont Housing and Conservation Board adopted guidelines for establishing buffer strips on farms protected by PACE. The guidelines define buffers as "corridors of land between a readily defined natural feature, such as the top bank of a waterway, and land uses, such as agriculture, that disturb naturally occurring vegetation<sup>17</sup>."

VHCB will not agree to accept buffer provisions in an agricultural conservation easement unless another agency or organization with resource management expertise will co-hold the easement. Buffers may be used “when current or potential land uses on the farm property could harm habitat and natural processes that are considered to be especially significant,” such as waters that have been designated as Outstanding Water Resources by the state or critical habitat for fish or wildlife species, as determined by the Commissioner of Fish and Wildlife<sup>18</sup>.

VHCB buffer easements must include a buffer management plan, which may describe broad resource protection goals, but may not dictate specific farming practices. Management plans should be funded by and prepared in cooperation with a natural resource agency or private conservation organization, such as the state department of fish and wildlife or The Nature Conservancy. VHCB guidelines explicitly state that acceptance of buffer easements should be voluntary, and that conservation organizations and state agencies should not imply that landowners must accept a buffer provision as a condition of selling an agricultural conservation easement<sup>19</sup>. The restrictions imposed by buffers will be taken into account when the value of a property is appraised. VHCB will pay for any decreases in agricultural values that result from buffers under the new policy<sup>20</sup>.

In general, the type and degree of restrictions imposed by a PACE easement are likely to be reflected in the purchase price. Any permitted non-farm development should reduce the price paid for the easement, while limitations on agricultural use and permission for public access can be expected to increase the purchase price.

#### Valuation of easements

Easement prices can influence the kind of farmland that is protected and its priority. But prices are also important because public accountability requires that government agencies not overpay for easements. In practice, prices range from as little as \$425 per acre in remote areas of Vermont to up to \$10,000 per acre in Massachusetts and as much as \$20,000 per acre in New York’s Suffolk County. The Vermont Housing and Conservation Board will not pay more than \$975 per acre, with a per-project cap of \$250,000. If a farm easement is worth more than \$250,000, VHCB may buy it in stages over several years. Private foundations also contribute to easement purchases.

The price of easements has historically been determined through professional appraisals. The value of the easement is typically the difference between the appraised fair market value of the property before and after restrictions on nonagricultural land use are imposed by the easement. The theory is that landowners should receive the same return on farming the land and investing the proceeds of the sale of the easement as they would from simply selling the property for development. The IRS requires the use of appraisals to determine the value of conservation easements that can be deducted from income and estate taxes.

Appraisals appear to have worked reasonably well for most jurisdictions operating PACE programs, but may have resulted in the loss of some farms that state or local governments would have liked to protect. Appraisals take a long time, often six months or more. They also tend to be expensive—appraisals for the Massachusetts APR program generally range from \$2,400 to \$5,000<sup>21</sup>, appraisals in Vermont range from \$1,800 to \$2,000<sup>22</sup>.

They are subjective and therefore open to legitimate question. Many programs either require or allow more than one appraisal, with the final offer reflecting an average or some other negotiated price. Doing multiple appraisals compounds their cost—landowners usually pay for the second opinion—and extends the time consumed by the process.

The nature of the before-and-after appraisal method also creates a dilemma for PACE program managers: in general, the better the farm, the lower the easement value. The problem is that appraisals measure what developers are willing to pay for farmland, not what farms are worth to society. Consider two farms of the same size in similar areas—an overgrown, run-down farm with poor soils and few agricultural improvements, and a well-maintained farm with prime soils, a new barn and processing building, a machine shop and a manure pit. Common sense says that society should pay more to protect the second farm. But using the before-and-after appraisal method would probably result in a higher easement value on the first farm for two reasons. First, farmers would be willing to pay more for the second farm than the first. The “after” value of this farm would thus be higher, reducing the difference between restricted and fair market value. Second, the improvements on the second farm are worth a lot to a farmer, but they’re a nuisance to a developer—few homeowners want industrial buildings and a manure pit in their backyard. So the two farms are at best equal in terms of fair market value.

Finally, appraisals tend to result in higher prices for easements in high-development areas where farms have the lowest chance of survival. Yet where development pressure is severe, PACE may work best when combined with agricultural protection zoning. APZ can stabilize land use, protecting those who sell easements from conflicts with neighbors and giving the community time to acquire easements over a large amount of farmland. Logically, higher prices for easements should be paid in areas protected by zoning to compensate for the reduction in the development value of land that it causes. But the appraisal method does just the opposite, because agricultural protection zoning often depresses the market value of farmland.

The problems with appraisals have led some jurisdictions to experiment with other methods of valuing easements. Among the most interesting is the point system developed by Montgomery County, Md. The Montgomery County program values an easement based on the characteristics of the farm that make it desirable for development, and on the agricultural and scenic values that it provides. Though many jurisdictions use point systems to determine PACE priorities, Montgomery County was the first to convert points directly into dollars, translating farm acreage, prime soils, crop value, road frontage, use of conservation practices and proximity to the edge of the county’s Agricultural Reserve boundary directly into the purchase price through a formula. Offering prices range from approximately \$1,200 per acre for small tracts of remote, relatively poor land to more than \$4,000 per acre for large farms with good soils near the suburban fringe.

Montgomery County’s point system is popular with both landowners and elected officials. As a double check, the price range is periodically compared with sample appraisals. Another advantage of this method is that it is very efficient: Since all the point factors are readily determinable from maps and a site visit, putting a price tag on an easement takes very little time and costs much less than an appraisal (see Appendix F, p. 116 for a sample easement valuation form). Harford and Howard Counties in Maryland and San Juan County, Wash., also

use point systems to value easements. The San Juan County Land Bank adopted the system for its PACE program in 1996, although it continues to use appraisals to value easements on coastal properties and land within urbanized areas.

### Methods of payment

Landowners are generally paid for easements in a single cash lump sum at settlement. However, some landowners are concerned about the high capital gains tax they would owe as a result of the transaction. In addition, banks will often require farmers to use the proceeds from sale of an easement to pay off their mortgages. Occasionally, a farm family may find that they actually owe more money in taxes than they have available in cash after the sale. To accommodate the needs of landowners, some states, including Connecticut, Kentucky, Maryland, New Jersey and Pennsylvania, offer installment payments over a period of between three and 40 years. Installment payments can help agencies leverage their available funds by entering into more transactions. This can be important to the success of a PACE program in locations where development pressure is severe. However, programs must be assured of future cash flow to fulfill the installment payment commitments they have made.

Howard County, Md., finances its installment purchase PACE program by offering landowners “securitizable contracts” in payment for easements. These financial instruments provide for annual, tax-exempt interest payments with the principal amount due in 30 years. At any time, the landowner can convert the contract into a security (similar to a bond) that can be sold on the open market to recover the principal amount, that then becomes taxable. The county funds the program by purchasing zero-coupon bonds payable in 30 years at approximately 10 cents on the dollar—thus affording it significant financial leverage—while fulfilling annual payment obligations with a dedicated 1/4-percent tax on all real estate transactions in the county. Several other jurisdictions, including Harford County, Md., Mercer and Burlington counties in New Jersey, Virginia Beach, Va., and Southampton, N.Y., use this method.

### **Franklin Land Trust Installment Loan Forgiveness Program**

In states that do not offer an installment purchase option, a land trust may be able to negotiate flexible easement payment terms. The Franklin Land Trust in western Massachusetts has developed a creative twist on installment purchase of easements. The land trust essentially negotiates deals in which farmers agree to sell easements and continue farming in exchange for debt forgiveness. This strategy is useful only for farmers who have mortgages on their land. The installment forgiveness program offers substantial benefits to the farmer, the land trust and the public. The farmer saves a significant amount of money on taxes. The land trust benefits from positive publicity. And the public benefits because the land stays in active farming. The contract allows the farmer to end the agreement at any time if he wants to stop farming. Ending the agreement, however, requires the land trust to forgive the entire mortgage immediately, leaving the farmer with a large tax bill. This is a strong incentive for the farmer to keep the land in active agricultural use.

Yet another method of “paying” for easements is to persuade sellers to discount the price. As discussed above, several jurisdictions do this by according higher priority to discounted purchases. Others educate landowners about the federal income and estate tax benefits of bargain sales. The value of any price discount that is not offered in exchange for a higher purchase priority is deductible as a charitable contribution in the year of the transaction, subject to a limit of 30 percent of the landowner’s adjusted gross income. If not fully used to offset that year’s taxes, the value can be carried forward to reduce taxes in each of the following five years.

### How to raise PACE funds?

There is no magic way to raise funds for PACE. “Whatever works” is the rule. The most common approaches are annual appropriations and bonds. Maryland uses real estate transfer taxes. Other jurisdictions have found creative sources of funding, including property taxes, private contributions, matching funds and special-purpose taxes.

#### *General obligation and special purpose bonds*

Bond funding often offers the advantage of ensuring a predictable flow of funds for several years. Bonds can be authorized directly by the appropriate legislative authority, as in Massachusetts and Connecticut, or by voter referendum, which has been the practice in New Jersey, California, and King County, Wash. Particularly in the case of new PACE programs, referenda give elected officials the comfort of knowing that the public supports farmland protection. For example, the Pennsylvania legislature put a \$100 million bond issue to public referendum before the legislature voted on the issue. These referenda often pass with a 60 percent or greater margin, but this is not always the case. In King County, Wash., voters turned down two bond issues to fund PACE before the program was finally approved in 1979. The county continues to have trouble convincing voters to pay for PACE: An open space bond which included funding for farmland protection was defeated in 1996.

#### *Annual appropriations*

Vermont and several Pennsylvania counties authorize expenditures on PACE from general or discretionary funds. The pay-as-you-go system has the drawback of uncertainty from year to year, which is problematic for farmers who intend to sell easements as part of their long-term financial plans.

#### *Real estate transfer taxes*

Maryland is the leading state using real estate transfer taxes to fund PACE. Revenues generated by a 1/2-percent tax on the value of all real estate transfers are divided between parkland acquisition and farmland protection. Maryland has an additional conversion tax on land that is removed from agricultural production, which ranges from 3 percent to 5 percent of the sale price, depending on the type and condition of the property. Conversion tax revenues are devoted exclusively to PACE. Howard and Harford Counties have their own real estate transfer taxes. Michigan also has a conversion tax that was previously used for parks but which will now be dedicated to a new PACE program. An advantage of this approach is that

the level of funding varies directly with development pressure, increasing when landowners are most tempted to sell but declining when the real estate market cools.

#### *Dedicated increment of property taxes*

A growing number of local jurisdictions are funding PACE with a dedicated increase in property taxes. In 1994, voters in Peninsula Township, Mich., agreed to a \$1.25 per \$1000 in assessed value property tax levy for a 15-year period. Virginia Beach, Va., voters approved a 1.5-cent increase in local taxes to fund PACE. Thurston County, Wash., was already using revenues from an optional local tax of 6.5 cents per thousand to fund open space acquisition when a PACE program was approved in 1996. Revenues from the tax are now being shared between parks and the new PACE program.

#### *Private contributions*

Private land trusts sometimes contribute toward the purchase of agricultural conservation easements. Vermont's state PACE program makes the most of its easement purchases through grants to land trusts, which have been very successful in raising matching funds from private foundations. The Vermont Land Trust receives an average of two dollars in private contributions for every dollar it receives from the VHCB<sup>23</sup>. In 1996, the average purchase price of agricultural conservation easements in Vermont was \$747 per acre, but the average cost to VHCB was only \$551 per acre<sup>24</sup>. Marin Agricultural Land Trust in California also uses a combination of public and private funding sources.

#### *Matching funds*

Many state PACE programs require local jurisdictions to contribute part of the purchase price. In Maryland, for example, the cost is split 60 percent state, 40 percent county. In Pennsylvania, the percentage of the local share varies with the significance of local agriculture to the state. Counties with high annual farm commodity sales have to put up less money for every dollar in state PACE funds, thus deliberately targeting state funds to these counties. The New Jersey program will not pay more than 80 percent of the fair market value of an easement or the actual easement purchase price, whichever is lower. The actual cost sharing formula for any particular easement purchase depends on the landowner's asking price. The difference between the state contribution and the easement value must be made up from county or township funds or by a donation from the landowner.

Matching requirements leverage state PACE funds and encourage local governments to invest in farmland protection. Maryland and Pennsylvania, the two states that have protected the most farmland with PACE, both require local governments to bear part of the cost of protecting farms.

#### *Federal funding*

The 1996 Farm Bill passed by Congress authorizes the U.S. Department of Agriculture to provide \$35 million over six years in farmland protection matching grants to states and localities that have obtained state approval to purchase easements. In 1996, 13 state and 24

local PACE programs received a total of \$14,325,000 in federal matching funds<sup>25</sup>. The Massachusetts APR program received \$500,000 in federal matching funds through the Intermodal Surface Transportation Act (ISTEA) in 1996. The funds are dedicated to purchasing restrictions on farms along scenic roads in the Connecticut River corridor.

In Vermont, the VHCB has used the federal Debt-for-Easements program as a funding mechanism for PACE. Under the program, a farmer's debt owed to the federal Rural Economic and Community Development Administration may be canceled in exchange for donation of a conservation easement to VHCB and/or the nonprofit Vermont Land Trust. At least three Vermont farms have been protected through this program to date<sup>26</sup>. Easements negotiated through this program, however, prohibit almost all agricultural activities—land may occasionally be used for pasture or hay. For this reason, the Debt-for-Easements program is not a viable option for most farmers.

### *Other sources*

The potential sources of funding for PACE are limited only by imagination and politics. Pennsylvania uses a cigarette surtax; Sonoma County, Calif., has a dedicated local sales tax; Solano County, Calif., created a special tax district, and Virginia Beach, Va., raises money for PACE from a cellular phone tax. The city of Davis, Calif., makes developers pay for PACE through a unique farmland mitigation program. Maine has a state-sponsored credit card that raises money to acquire important natural resource lands. In Michigan, farmers who are enrolled in the state circuit-breaker tax relief program may be required to pay back taxes if they convert their land from agriculture. These funds are dedicated to PACE. Regardless of the source, if a PACE program does not have reliable funding, landowners cannot incorporate the sale of easements into their long-term financial planning. This detracts from the ability to offer landowners a competitive alternative to development when they need it.

### **How to distribute PACE funds?**

The distribution of funds among and within local jurisdictions is an important issue for state PACE programs, as well as for counties that distribute PACE funds to towns or townships. Generally, a tradeoff must be made between targeting limited funds to protect the most important farmland—which is usually concentrated in just a few localities—and spreading them around for political reasons, to ensure that a broad constituency for program funding will continue to exist.

When Pennsylvania implemented its PACE program in 1988, it faced the challenge of distributing funds among 67 counties, six of which—Adams, Berks, Chester, Cumberland, Lancaster and York—account for 42 percent of the state's agricultural production and much of the farmland under urban pressure. It created a computerized formula that is used to distribute PACE funds among counties at the beginning of each year on the basis of real estate activity and value of farm products sold in each county. The formula also accounted for county matching funds as an indication of local commitment to protecting farmland. This system resulted in the concentration of funds in the six counties where farmland protection was of most critical concern, while enabling more than 20 other counties to have a piece of the pie. As more counties became interested in PACE, however, the distribution formula was changed to spread funds more evenly across the state.

Maryland splits total PACE funds in half and divides one half equally among its 23 counties. The other half is allotted to those counties that put up matching funds in proportion to their respective contributions. In both Pennsylvania and Maryland, state funds allocated to counties but not used by them to purchase easements go back into the funding pool for redistribution among counties that are actively pursuing PACE. In Maryland, counties that run their own PACE programs may receive 75 percent of the proceeds of the 3- to 5-percent conversion tax on farms that are developed within their jurisdictions. This tends to concentrate funds in fast growing counties in the Piedmont—as did the matching fund formula—rather than the agriculturally more important but slower-growing Eastern Shore.

#### **How to administer PACE programs and enforce easements?**

Addressing all the questions that arise in the administration of PACE programs is beyond the scope of this publication, but several issues stand out.

##### *Governing structure*

Effective governing structures must be efficient, yet reflect the broad political constituency necessary to maintain support for a PACE program over time. In most states and localities, ultimate decision-making authority rests with a politically appointed board or committee composed of public officials and representatives of the agricultural community. A salaried program administrator, usually employed by the agency responsible for agriculture, oversees day-to-day program operations. In states like Pennsylvania and New Jersey, where counties have a greater role in the PACE programs, many administrative functions are delegated to local boards and administrators. Active state PACE programs commonly employ one to four full-time staff people; local programs may not have their own dedicated staff, but generally require the equivalent of at least one full-time position.

##### *Legal documentation and formalities*

Because easement purchases transfer titles to interests in real property, they must be legally sound. Most important, the deed must spell out clearly the rights and responsibilities of the landowner and easement holder. Programs must require a title search to discover defects that could render the deed unenforceable, and the deed must be recorded formally in the appropriate local land records.

Where bonding is used to raise funds, state law must be followed to ensure that funding is secure. The King County, Wash., program suffered an early setback when program detractors challenged the procedure used to issue its initial bonds in court on a technicality. As a result, program administrators had only three years to make acquisitions before a sunset clause took effect.



### *Monitoring and enforcement*

Agricultural conservation easements are only as effective at protecting farmland as the effort used to enforce the restrictions they impose on the use of land. A systematic monitoring program is essential. Enforcement responsibility, however, can repose in either the state or community, or both. In Pennsylvania, this responsibility is delegated to local program administrators, who visit protected properties to observe whether development or other restricted uses have occurred. Program administrators typically oversee the development of lots for family members and farm employees that are permitted by some PACE programs. The state attorney general is usually given responsibility for enforcing state-held easements, which can be an advantage because local officials may be under more peer pressure to be lenient with friends and neighbors. In Vermont, private, nonprofit land trusts monitor easements<sup>27</sup>.

Monitoring and enforcing easements over time requires a long-term commitment. This commitment must be maintained even if the program is no longer acquiring easements. Restricted properties change hands over time, and new owners may be unfamiliar with the provisions of the original covenant, or even unaware of its existence. Local government officials such as building inspectors, assessors and members of planning and zoning boards must also be reminded of the existence of easements to ensure that they do not approve inappropriate development on restricted properties.

King County, Wash., stopped acquiring easements in 1987, and program staff were assigned to other projects. In 1991, a county audit concluded that "monitoring of the Farmland Preservation Program properties was inadequate to provide reasonable assurance that the easements acquired under the program would be effectively preserved<sup>28</sup>." As a result of the auditor's findings, King County hired someone to monitor easements. The cost of this function in 1997 was \$55,000.

### *Termination of easements*

Most easements purchased through PACE programs are intended to be permanent, but the programs generally outline a set of conditions under which easements may be terminated and a process for doing so. In California, Delaware, Maryland and Pennsylvania, landowners must wait at least 25 years before requesting that an easement be terminated. In each of these states, the local governing body in the area where the farm is located must hold a public hearing on easement termination. One important condition for termination is a local government finding that profitable farming is no longer possible on the land.

In Connecticut, easements may be terminated with approval of the Commissioner of Agriculture and by popular vote in the town where the property is located. Other programs make provisions for terminating easements when agriculture is no longer a feasible use of the land. In Massachusetts, a two-thirds vote of both houses of the state legislature is required to terminate easements for the public good. All PACE programs require landowners to repay the difference between agricultural value and fair market value at the time the easement is terminated. In Delaware, owners must also repay any real estate transfer taxes and gift and death taxes saved while the land was under easement.

In 1996, Forsyth County, N.C., began negotiating to sell an easement back to one of the landowners in the PACE program. The easement on the 67-acre tobacco farm was purchased in 1988, when most of the surrounding land was in agricultural use. By the mid-1990s, the farm was largely surrounded by houses. The remaining farmland was under option to developers, and the farmer could no longer lease enough land to operate his farm economically. NRCS District Conservationist Michael Washington guesses that there are probably four other parcels restricted by agricultural conservation easements, encompassing approximately 150 acres, that are likely to become “landlocked” by development. He reflects, “If we had it to do over again, I would have bought [easements on] blocks of land in one place, instead of scattered here and there.” Forsyth County’s experience is a stark reminder of why state and local governments need to take a strategic approach to protecting farmland.

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#### PACE AND AGRICULTURAL PROTECTION ZONING

#### RELATIONSHIP BETWEEN PACE AND OTHER FARM- LAND PROTECTION STRATEGIES

Because PACE is generally popular with farmers and non-farmers alike, it can build political support for agricultural protection zoning. APZ, when combined with PACE, can improve the odds of protecting enough local farmland to perpetuate agriculture. Because it requires no public expenditure, zoning can stabilize farmland use over a wider area far more quickly than PACE. But zoning regulations tend to reduce land values without compensation, so landowners bear the entire cost of protecting the land. For this reason, zoning is often opposed by farmers and others with an investment in farmland. By investing in agriculture through PACE, local governments may help overcome this initial resistance to zoning. And, as more and more farmland is permanently protected by PACE, the landowner constituency for maintaining agricultural zoning may expand, making it less likely that it will be repealed or weakened.

Yet APZ can also cause problems for PACE administrators. If downzoning reduces the market value of farmland, appraisals will result in lower easement prices, thereby reducing the incentive for farmers to participate in the PACE program. One solution to this problem is for communities to use a point system to measure the agricultural value of farmland, rather than appraisals, which measure the value of land for development.

#### PACE AND AGRICULTURAL DISTRICTS

In Maryland, Pennsylvania and Delaware, farmland owners must enroll their property in a state-approved agricultural district in order to be eligible for PACE. This requirement accomplishes several purposes. First, it gives farmers a strong incentive to form agricultural districts. Second, it increases the likelihood that protected farms will be located in an area where agriculture is economically viable. Finally, it limits development on farms while the landowners are waiting to sell easements.

#### PACE AND TRANSFER OF DEVELOPMENT RIGHTS

Transfer of development rights programs are similar to PACE in that they result in permanent conservation easements on farmland, but TDR transactions generally take place between private parties. A few jurisdictions have “TDR banks,” which buy development rights in the same way that PACE programs purchase easements, but the banks have the authority to resell the development rights to other landowners.

A few counties, including Montgomery County, Md., and Thurston County, Wash., have both PACE and TDR programs. Montgomery County recently began banking the development rights it purchases from landowners through the PACE program. It does not yet have permission to sell these rights, but it may obtain this authority in the future. Thurston County is purchasing easements on farmland that provides environmental and open space values, while relying on TDR to protect other important agricultural land.

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PACE has some important advantages over other farmland protection techniques. The programs protect farms permanently, and they are popular with farmers because they are voluntary and provide compensation. They generally enjoy broad community support and offer an opportunity for cooperation between state and local governments and private organizations. Increasingly, PACE is being used to protect important natural resources such as watersheds and wildlife habitat, creating a win-win situation for agriculture and the environment.

OBSERVATIONS

Yet the future of PACE programs will depend in large measure on how successfully they can address their most serious shortcomings: high public cost and the slow pace of acquisitions. As urban growth accelerates, PACE is even less likely to keep up with development pressure. The result may be “patchwork” patterns of protected farmland. These scattered blocks of land may become islands of open space among sprawling subdivisions, making it difficult for commercial farming operations to survive. Some people fear that farmland under easement may become a magnet for adjacent development because it is permanently protected open space.

The high cost and slow momentum of PACE programs bespeak a need for several policy innovations: becoming more deliberate and strategic about setting qualitative and quantitative farmland protection objectives; giving PACE time to work by employing other policy tools like agricultural protection zoning to stabilize agricultural land use; and making PACE more competitive in time and price by modifying or abandoning the appraisal approach to valuation. Finally, funding for PACE must increase and become more predictable.



For more information on farmland protection, contact the Farmland Information Center at <http://www.farmlandinfo.org> or call (413) 586-4593.

APPENDIX D: MASSACHUSETTS OPTION TO PURCHASE PROTECTED LAND AT AGRICULTURAL VALUE

APPENDICES

We, \_\_\_\_\_ (the "Grantors") for good and valuable consideration, receipt of which is hereby acknowledged, do hereby grant an option to Purchase Real Estate at Agricultural Value ("Option" to the Department of Food and Agriculture with the address of 100 Cambridge Street, Boston, Massachusetts, its successors and assigns (the "Grantee") for the purchase of land located at \_\_\_\_\_ Street, \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts described in Exhibit A of this Instrument (the "Premises").

The intent of this Option is to ensure that the Premises remains affordable for agricultural production and that its market value for other uses does not preclude its profitable use for agriculture. It is understood that this Option shall constitute a restriction that runs with the land and is binding in the event of a foreclosure on said Premises.

A. The Grantors agree that no sale of the Premises to any third party will occur without first offering to sell the Premises to the Grantee for a price (the "Offering Price") which shall be the greater of:

- 1) a) the full and fair market value of the Premises for commercial agricultural production, (plus the value of any improvements), as determined by an impartial appraisal which shall be conducted at the election of the Grantors and paid for by the Grantors; or
  - b) an amount equal to the agricultural value of the Premises as determined by the appraisal relied upon for the acquisition of this APR, which sum shall then be multiplied by the Inflation Rate, (plus the value of any improvements as determined by an independent appraiser), hereinafter defined. The Inflation Rate shall be equal to 1 plus the fractional increase for all Urban Consumers, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from June 1, 1993 to the date of offer. At no time shall the fair market value be below \_\_\_\_\_, which is the agricultural value of the Premises at the time of the acquisition of the Agricultural Preservation Restriction; or
- 2) Where the bona fide offer is less than the greater of the two amounts determined by the procedures set forth in A(1) (a) and A(1) (b), then the Grantor agrees to offer to sell the Premises to the Grantee for this lesser amount.
- 3) In the event of an approved subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof into two or more parcels, the offering price shall be determined pursuant to paragraph A(1) above.
- 4) All appraisals conducted for the purposes of this Option shall be conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department as in effect at such time.

B. Any offer made by the Grantors to the Grantee pursuant to this agreement shall be carried out in accordance with the following procedures:

- 1) The Grantors shall provide to the Grantee: a) written notice ("Notice") stating their intent to sell the Premises; and b) a true, correct and complete copy of a bona fide offer from a third party to purchase the Premises.

2) Upon receipt of this notice, the Grantee shall have 120 days to notify the Grantor of its election to purchase the Premises for the Offering Price in accordance with said offer. The Grantor shall be notified of this election or waiver of the Option by written notice.

C. In the event that the Grantee elects to purchase the Premises, the deed shall be delivered and the consideration paid at the \_\_\_\_\_ County Registry of Deeds at 9 o'clock a.m. on the one hundred twentieth (120) day after the date of receipt by the Grantors of the notice of election to purchase or, if a Saturday, Sunday or holiday, on the next business day thereafter, and the deed shall convey a good and clear record and merchantable title to the Premises free of all encumbrances, and the Premises shall be in the same condition as it was at the time of the acceptance of such Offer, reasonable wear and tear and use thereof excepted. The date and time of the transfer may be amended by written mutual agreement of the parties.

D. The Grantor may sell the Premises, within one (1) year of the date of the Grantee's receipt of Notice, to the purchaser who has made a bona fide offer referred to in paragraph B(1) above, only in the event that the Grantee:

- 1) declines in writing to elect its Option within the specified time period; or
- 2) fails to waive its Option in writing within the specified time period; or
- 3) having elected its Option, fails to complete the purchase within the specified time period.

E. The obligations of the Grantor under this Option shall not apply where the transfer of ownership of the Premises will be a result of:

- 1) a gift for nominal consideration to the Grantor's spouse, parent, children, or grandchildren (whether by blood, marriage, or adoption), siblings and/or their children or grandchildren (whether by blood, marriage, or adoption);
- 2) the devise (or conveyance) of said Premises by the will or intestacy of the Grantor, their heirs, successors or assigns;
- 3) any sale of the Premises to a partner of the Grantor who is physically engaged in the day-to-day agricultural operation of the Premises.

F. Any notices required by this Option shall be in writing and shall be deemed delivered if delivered in hand or mailed, postage prepaid by certified or registered mail return receipt requested, addressed in the case of the Grantor to such address as may be specified in the Notice or if none, then to the Premises, and in the case of the Grantee, to the Department of Food and Agriculture, Chief, Bureau of Land Use, 100 Cambridge Street, Boston, MA 02202.

G. The Grantee may assign its Option at any time after providing the Grantor notice of its election to exercise its option in accordance with the terms of paragraph B(2) above, provided that the Option may only be assigned to a party which, in the Grantee's opinion, will use or facilitate the use of, the Premises for commercial agricultural production. Any assignment shall only be effective when made in writing, signed by the Commissioner of Food and Agriculture, and duly recorded with the appropriate registry of deeds.

H. Any waiver of the Grantee's option shall be in writing, signed by the Commissioner of Food and Agriculture, and in a form and format suitable for recording in the registry of deeds. This waiver shall serve to satisfy the Grantors' obligations under this Option to the Grantee with regard to the named buyer only.

I. The rights and obligations of each Grantor hereunder shall inure to and be binding upon the Grantor and the Grantors' heirs, legal representatives, successors in title and assigns. This instrument is not a deed. It does not purport to transfer a fee interest to the Grantee. No Massachusetts deed excise stamps are affixed hereto as none are required by General Laws c. 64D, Section 1, as amended.

WITNESS the execution hereof under seal this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

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 APPENDIX E: BURLINGTON COUNTY, NEW JERSEY CRITERIA AND FORMULA FOR RANKING PACE APPLICATIONS

## REVISED CRITERIA - EASEMENT PURCHASE 1994

## 100 Point Scale

The evaluation of each easement purchase application shall be based on the merits of the individual application. Each application in turn contributes to the overall rank of the Project Area in which it is located. The weight factor assigned to each criterion indicates the relative importance of the specific criterion in relation to the other criteria.

The criteria listed below shall be combined to determine the degree to which the purchase would encourage the survivability of the project area in productive agriculture.

Priority will be given to soils which exhibit superior quality, require minimal maintenance and have a greater potential for long term viability for a variety of agricultural purposes. Factors to be considered are as follows:

**A. Soils - weight 20**

1. Land Capability System identified by the U.S.D.A., Natural Resources Conservation Service
2. Implementation of soil and water conservation measures.

## Formula:

% Class I	x 40
% Class II*	x 25
% Class II	x 15
% Class III*	x 10
% Class III	x 05

Total weight = the sum of the categories.

\* Submission of an approved conservation plan is required. The acreage which has soil and water conservation measures installed to overcome their limitations may use this category. The presence of conservation measures will be determined by verification of implementation of the approved conservation plan.

**B. Soils - weight 15**

1. Important Farmland Soils identified by the U.S.D.A., Natural Resources Conservation Service.

## Formula:

% Prime	x 15
% SWI	x 10
% Local	x 05

Total weight = the sum of the categories.

**C. Percent Tillable - weight 15**

This criterion is added in order to more clearly identify those farms that are highly productive. It is believed that the lands that are currently available for production are often the only lands suitable for production. Whereas the soil criterion allocates points for the entire premises, this category only evaluates the land in production.

\*Soil tests must be submitted and satisfactory pH, potassium and phosphorus levels noted.

Formula:

80% - 100% tillable	*15 or 12.5 points
60% - 79% tillable	*10 or 07.5
50% - 59% tillable	*05 or 02.5
49% tillable	0

**D. Septic Limitations - weight 05**

This criterion is included to evaluate the relative development potential of the applicant farm.

% Soils classified as slight limitation x 05

% Soils classified as moderate limitation x 02

Total weight = the sum of the categories.

**E. Boundaries and Buffer - weight 20**

Priority will be given to the greatest proportion of boundaries with buffers, which help protect the integrity of the individual application and/or project area from conflicting nonagricultural uses.

The following weights have been assigned to the factors to be considered.

A. Deed restricted farmland (permanent)	20 points
B. Restricted wildlife area or state owned land	18
C. Streams (perennial) and wetlands	18
D. Parks (limited access)	14
E. Military installations	14
F. 8 years programs [agricultural district] and EP applications	13
G. Highways (limited access)	10
H. Farmland (unrestricted)	06
I. Parks (high use)	05
J. Residential	0
K. Other (landfills, private golf courses)	*

\* Value to be determined on a case by case basis

Formula:

Weight of buffer x % perimeter of application affected by buffer = total weight per buffer

**F. Density - weight 10\***

A rating of the “relative contiguity” of a given application to other applications, eight-year [agricultural district] program farms or deed restricted farms.

“Relatively Contiguous”: means that there exists no additional development potential between the application parcel and the closest “program” property [property restricted by easement or enrolled in an agricultural district].



Formula: for each parcel, or chain of parcels, the applicant property is relatively contiguous with, the following point system applies: (note: this category is evaluated in the same manner as the SADC)

- |   |           |
|---|-----------|
| 1. Easement Purchase properties           | 02 points |
| 2. Other applicant properties             | 02        |
| 3. 8-year farmland programs               | 01        |
| Total weight = the sum of the categories. |           |

\*\*\* The CADB reserves the right to award an additional 10 points to the priority project areas.

**G. Size - weight 05**

Priority will be given to larger masses of farmland.

Formula:

- |               |           |
|---------------|-----------|
| > 150 acres   | 05 points |
| 100-149 acres | 03        |
| 80-99 acres   | 02        |
| 50-79 acres   | 01        |
| 20-49 acres   | 0         |

**H. Local Commitment - weight 05**

Priority will be given where municipal, county, regional and state policies support the long term viability of the agricultural industry.

Factors indicating support:

1. Financial contribution for current funding round at the local level.
2. Municipal adoption of a Right-to-Farm ordinance.
3. Zoning techniques are supportive of farmland preservation (ex. TDR program, mandatory buffering between development and existing agricultural operations, cluster zoning etc.)
4. Construction code fees charged for farm structures are at or below the state rate (.0008).
5. Establishment of an Agriculture Resolution/Advisory Board.

One point will be awarded for each factor.

**I. Special Considerations - weight maximum of 05**

Recognition of special considerations which cannot be adequately addressed in the previous categories.

1. Application supports other planning goals (ex. waterway, power easement or landfill buffer).
2. Historic significance.
3. Uniqueness of the agricultural operation.
4. Landowner is a full time farmer.
5. Imminence of change (ex. held by estate, property is for sale, foreclosure).
6. Other factors considered by the Board.

**SCORING SHEET  
EASEMENT PURCHASE APPLICATION**

APPLICANT: \_\_\_\_\_ TOWNSHIP: \_\_\_\_\_

BLOCK: \_\_\_\_\_ LOT: \_\_\_\_\_ ACREAGE: \_\_\_\_\_

**I. Soils: 35 points**  
Land Capability: 20 points

Approved conservation system: \_\_\_\_\_  
 Class I            acres: \_\_\_\_\_            % \_\_\_\_\_  
 Class II           acres: \_\_\_\_\_            % \_\_\_\_\_  
 Class III          acres: \_\_\_\_\_            % \_\_\_\_\_  
 Other              acres: \_\_\_\_\_            % \_\_\_\_\_

$(\%I \times 40) + (\%II \times 15) + (\%III \times 05) =$  Total \_\_\_\_\_

**Important Farmland: 15 points**  
 Prime              acres: \_\_\_\_\_            % \_\_\_\_\_  
 SWI                acres: \_\_\_\_\_            % \_\_\_\_\_  
 Local              acres: \_\_\_\_\_            % \_\_\_\_\_  
 Unique            acres: \_\_\_\_\_            % \_\_\_\_\_  
 Other              acres: \_\_\_\_\_            % \_\_\_\_\_

$(\% \text{ Prime} \times 15) = (\% \text{ SWI} \times 10) + (\% \text{ Local} \times 05) =$  Total \_\_\_\_\_

**II. Percent Tillable: 15 points**

	Soil tests*	without soil tests
80%-100% tillable = _____	(15)	_____ (12.5)
60%-79% tillable = _____	(10)	_____ (07.5)
50%-59% tillable = _____	(05)	_____ (0 2.5)
49% tillable = _____	(0)	

Total \_\_\_\_\_

**III. Septic: 05 points**  
 Slight            acres: \_\_\_\_\_            % \_\_\_\_\_  
 Moderate        acres: \_\_\_\_\_            % \_\_\_\_\_  
 Severe            acres: \_\_\_\_\_            % \_\_\_\_\_

$(\% \text{ Slight} \times 05) + (\% \text{ moderate} \times 02) =$  Total \_\_\_\_\_  
*\*see adopted criteria for explanation*

**IV. Boundaries and Buffer: 20 points**  
Total inches: \_\_\_\_\_

<u>Inches</u>	<u>Land Use</u>	<u>Weight</u>	<u>x</u>	<u>%</u>	<u>=</u>	<u>Points</u>
_____	Deed Restricted Farm	20	x	_____	=	_____
_____	State or restricted wild area	18	x	_____	=	_____
_____	Stream or wetland	18	x	_____	=	_____
_____	Park (limited access)	14	x	_____	=	_____
_____	Military Base	14	x	_____	=	_____
_____	8-year program or EP applicant	13	x	_____	=	_____
_____	Highway (limited access)	10	x	_____	=	_____
_____	Farmland (unrestricted)	06	x	_____	=	_____
_____	Park (high use)	05	x	_____	=	_____
_____	Residential	0				

Total \_\_\_\_\_

**V. Density: 10 points**

Reasonably contiguous to:

_____	Deed Restricted Farms	_____ x 02 = _____
_____	Other applicant properties	_____ x 02 = _____
_____	8-year farmland programs	_____ x 01 = _____

Priority project area \_\_\_\_\_ (10 points)

Total \_\_\_\_\_

**VI. Size: 05 points**

> 150 acres= \_\_\_\_\_ (5)  
 100-149 acres= \_\_\_\_\_ (3)  
 80-99 acres= \_\_\_\_\_ (2)  
 50-79 acres= \_\_\_\_\_ (1)  
 20-49 acres= \_\_\_\_\_ (0)

Total \_\_\_\_\_

**VII. Local Commitment: 05 points**

One point for each factor:

1. Financial contribution for current funding round at the local level. \_\_\_\_\_
2. Municipal adoption of a Right-to-Farm ordinance. \_\_\_\_\_
3. Zoning techniques are supportive of farmland preservation. \_\_\_\_\_
4. Construction code fees charged for farm structures are at or below the state rate (volume x .0008). \_\_\_\_\_
5. Establishment of an Agriculture Resolution/Advisory Board. \_\_\_\_\_

Total \_\_\_\_\_

**VIII. Special Considerations: maximum of 5 points**

1. Application supports other planning goals (ex. waterway, power easement, landfill, buffer, etc.) \_\_\_\_\_
2. Historic significance \_\_\_\_\_
3. Uniqueness of the agricultural operation \_\_\_\_\_
4. Landowner is a full time farmer \_\_\_\_\_
5. Imminence of change (ex. held by estate, property is for sale, foreclosure, etc.) \_\_\_\_\_
6. Other (list) \_\_\_\_\_

Total \_\_\_\_\_

APPENDIX F: EASEMENT VALUATION WORKSHEET FOR  
MONTGOMERY COUNTY, MARYLAND

Base: all farms receive 100 base points 100

Size: total farm acreage \_\_\_\_\_/05 = \_\_\_\_\_

Land quality: Acres soil class I \_\_\_\_\_/total acres \_\_\_\_\_ = \_\_\_\_\_ x 300 = \_\_\_\_\_

Acres soil class II \_\_\_\_\_/total acres \_\_\_\_\_ = \_\_\_\_\_ x 200 = \_\_\_\_\_  
(or woodland 1)

Acres soil class III \_\_\_\_\_/total acres \_\_\_\_\_ = \_\_\_\_\_ x 100 = \_\_\_\_\_  
(or woodland 2)

Approved and implemented soil conservation plan in place = 10 = \_\_\_\_\_

Land tenure: Farmer has \$5,000 or higher annual gross farm income = 25 = \_\_\_\_\_

Road frontage: Total feet of road frontage \_\_\_\_\_/50 = \_\_\_\_\_  
(Maximum 5000ft)

Agricultural zone edge: Property is within 0.5 miles of the RDT zone border = 100 = \_\_\_\_\_

Total points \_\_\_\_\_

Maximum easement value:

Total points \_\_\_\_\_ x Base value \$7.50 = Max. Value \$\_\_\_\_\_

Subtract 1 acre for each dwelling x number of acres \_\_\_\_\_

TOTAL EASEMENT VALUE \$\_\_\_\_\_

1. Edward Thompson, Jr., *Winning Friends, Losing Ground: States and Local Communities Need a Federal Partner to Protect the Nation's Farmland* (Washington, D.C.: American Farmland Trust, 1995).
2. *Ibid.*
3. Penn. Chapter 14A, section 914.1(d) ii.
4. California Civil Code Chapter 931, Division 11252(b).
5. Varna Ramaswamy, Vermont Tourism Data Center, telephone communication with Robin Sherman, April 11, 1997. The figures for revenues from Vermont tourism are based on lodging and restaurants. If retail sales were included, the number would be higher.
6. 10 Vermont Statutes Annotated 301(a).
7. Vermont Housing and Conservation Board, *1996 Report to the General Assembly* (Montpelier, Vt., 1996), p. 1.
8. Alex Considine, John Roe and Kate Willard, "Protecting Important Natural Areas, Wildlife Habitat and Water Quality on Vermont Dairy Farms through the Vermont Farmland Protection Program," in *Environmental Enhancement Through Agriculture*, William Lockeretz, editor (Medford, Mass.: Tufts University School of Nutrition Science and Policy, 1996), pp. 255-264.
9. California Senate Bill No. 275, 1995.
10. California Code Chapter 931, section 10251.
11. Judy Herring, Farmland Protection Specialist, King County, Wash., interview with Robin Sherman, 1996.
12. California Senate Bill No. 275, 1995.
13. Suffolk County Code, chapter 8, section 6.
14. Minutes of Farm Select Committee Meeting, Suffolk County Planning Department, Suffolk County, N.Y., January 28, 1992.
15. Greg Romano, telephone conversation with Robin Sherman, December 23, 1996.
16. American Farmland Trust, Protecting Farmland or Farming: Oldest Purchase of Easements Program Grapples with Both, *Farmland Update* 4 (1) (Northampton, Mass.: American Farmland Trust, 1992), p.5.
17. Vermont Housing and Conservation Board, *VHCB Buffer Strip Guidelines for Farmland* (Montpelier, Vt., 1996), p. 1.
18. *Ibid.*
19. *Ibid.*, p. 2.
20. David Dolan, telephone conversation with Robin Sherman, January 6, 1997.
21. Bob O'Connor, O'Connor Real Estate, Inc., telephone conversation with Robin Sherman, January 3, 1997.
22. David Dolan, *op. cit.*
23. Alex Considine, *Agricultural Land Protection in Vermont*, presentation given at Land Trust Alliance Rally (Burlington, Vt., October 19, 1996).
24. David Dolan, *op. cit.*
25. Local programs included a water management district in Florida and a private land conservancy in North Carolina.

ENDNOTES

26. Jim Libby, *RECD Debt for Conservation Easement Program* (Montpelier, Vt.: Vermont Housing and Conservation Board, 1996); and David Dolan, *op. cit.*
27. David Dolan, *op. cit.*
28. Memorandum from Don Eklund, County Auditor, to King County Council Members, November 1, 1991.
29. Michael Washington, telephone conversation with Robin Sherman, January 3, 1997.

American Farmland Trust. Protecting Farmland or Farming: Oldest Purchase of Easements Program Grapples with Both, *Farmland Update* 4 (1). Northampton, Mass.: American Farmland Trust. 1992, p. 5.

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