FACT SHEET

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

DESCRIPTION

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

BONDS

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

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

Benefits

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

Drawbacks

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

TAXES

Property Taxes

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

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

Real Estate Transfer Taxes

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

Legislatures can enact statewide transfer taxes or laws authorizing local jurisdictions to levy transfer taxes. In Washington, all counties may levy up to 1 percent of real estate sales. In contrast, the Maryland legislature grants transfer tax authority to local jurisdictions on a case-by-case basis. Enabling legislation typically requires taxing authorities to secure voter approval. For more information, consult local government administrators, municipal attorneys or state legislators.

Sales Taxes

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

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

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

Drawbacks
· Taxes are unpopular.
· Raising or levying new taxes requires well-organized campaigns to generate and sustain public support.
· Sales and property taxes are regressive and tend to fall disproportionately on lower-income people.
· Sales taxes are location-based and future revenues could be undermined by internet commerce.

ANNUAL APPROPRIATIONS

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

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

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

Drawbacks
· Funding is unpredictable from year to year.

FEDERAL FUNDS

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

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

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

State, local and tribal governments and private nonprofit organizations that serve a public function are eligible for funding. Projects must fall within the state and local government's overall mitigation strategy for the disaster area, and comply with program guidelines to qualify. HMGP will cover up to 75 percent of project costs. In kind services can be used to meet the state or local cost-share match. Each state sets its own priorities for funding and administering this

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

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

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

Benefits
- Federal grant programs that fund agricultural easement acquisitions make farmland protection a goal for the federal agencies that administer these programs.
- Federal grants provide much-needed assistance to farmland protection programs.
- HMGP, ISTEA and TEA-21 demonstrate that agricultural land provides floodwater storage and scenic vistas along transportation corridors, which helps make the case for farmland protection.

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

CREATIVE SOURCES OF FUNDING

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

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

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

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

Credit Cards
In 1996, the Land for Maine's Future Program issued the first state-sponsored credit card to raise money for land protection. LFMF acquires land to provide recreational opportunities, and to protect important natural resources (including farmland) and scenic views. The program receives 0.5 percent of all charges and has received about $60,000 to date.

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

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

Lottery Proceeds

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

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

Mitigation Ordinances

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

Mitigation ordinances are difficult to craft. The U.S. Supreme Court ruled in Nollan v. California Coastal Commission, 107 S. Ct. 3141, that there must be a direct connection or "nexus" between exactions from landowners and the proposed development's impact. Furthermore, in 1994 the U.S. Supreme Court determined in Dolan v. Tigard, 114 S. Ct. 2309, that exactions must be "roughly proportional" to the impact of the development.

Special Districts

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

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

Benefits

· These funding options are often viewed as "new" sources of revenue and receive enthusiastic public support.
· The check-off box and credit card programs allow residents to choose to contribute to farm land protection.
· The mitigation ordinance makes developers pay for farmland protection, establishing a clear link between the cause and a potential solution.

Drawbacks

· Localities may not be able to secure the authority to implement some of these options.
· Some of these strategies produce modest revenues or take a few years to generate significant sums.

ISSUES TO ADDRESS

· What does state or local law allow?
· How difficult will it be to get approval?
· How much money can be raised?
· How predictable is the funding source?
· How secure is the funding source? Could funds be "raided" by state or local governments during fiscal crises?
· Who benefits and who pays?