Appendix B: Purchase of Development Rights, Case Studies

Howard County, Maryland

Howard County, located midway between Washington D.C. and Baltimore, was primarily rural until the "new town" of Columbia was built in 1966. Today, it wrestles with the expansion of both major cities and tremendous suburban growth, but is aided by a progressive state political emphasis on growth management.

a. Motivation for the program

To support the agricultural community by helping to keep the land base available for farming, and by minimizing the impact of residential development in agricultural areas. Approximately 94,000 acres in the western portion of the county not currently served by public sewer and referred to as the "Rural West" in the General Plan 2000 document, are of highest priority.

b. Mechanism for funding

From 1989 to 1997, the PDR easement acquisition program was funded by two sources of revenue:

1. the Howard County Real Estate Transfer Tax Dedication – a locally imposed 1% tax on all real estate transfers. One quarter of the total dedicated to the PDR program
2. the Maryland Agricultural Transfer Tax – a 5% conversion tax paid on land that is no longer agriculturally assessed. County retains 75%, with 25% sent to state for use in PDR funding.

A unique aspect of this county's program is its method of payment to landowners for the easements. This is done through an Installment Purchase Agreement, whereby the county pays the landowner the principal amount after 30 years. The county purchases and sells zero coupon bonds, 30 year maturity, to pay the principal, and pays the landowner tax-free interest semi-annually over the 30 year period, at a rate based on the current U.S. Treasury bond yield and not less than 6.5%. IPA's can be transferred, and can provide deferral of capital gains taxes.

Because the IPA program is a general obligation of the county, an enabling ordinance is passed each fiscal year authorizing the amount that can be spent for easements that year based on projections of the above revenue sources.

c. Length of time to develop program

Unclear, but the original PDR program implemented by the Maryland Agricultural Land Preservation Foundation, a state program, ran from 1980 to 1988. The Howard County program with its Installment Purchase Agreement overlay (see d.) then replaced the state program. The IPA program itself was a 2-year process from idea to first purchases under the program.

d. Program logistics/summary

Land subject to agricultural preservation easements, which are voluntarily offered for sale or donated to the county by the landowner, may not be developed in perpetuity for purposes other than agricultural uses; used for commercial, industrial or residential purposes; or subdivided (some opportunity for 50 acre subdividing allowed).

The county may accept donations or buy easements on land that meet specific criteria as outlined in the Howard County Code Sec. 15.506 (developable, of a certain size, and meeting soil criteria). If buying, the Board considers applications in batches, and advertises the relevant dates. Applications are submitted to the administrator by the landowner accompanied by a nonrefundable application fee. If all eligibility requirements are met, the administrator adds further evaluation and prepares a LESA (land evaluation / site assessment) score and pricing formula score on the parcel. The pricing is a point-based formula outlined in the overall plan. This is submitted to the Board for consideration. The Board makes an on-site inspection of the parcel, holds a public hearing for comments, and then votes on further consideration. If approved, the Board determines the price to be offered.

All parcels in the batch are completed, and then ranked in priority. Offers are made to landowners in order of ranking. If the landowner agrees, the Board notifies the county executive in writing. The county executive then approves / disapproves the offer, and cannot modify it.

If all monies have been committed before all offers are made in the batch, the Board can recommend that some or all of the remaining parcels be considered with the next batch.

e. Who administers the program, and what are the administrative costs and funding source?

The "Board" referenced in these notes is the Agricultural Land Preservation Board. This Board consists of 7 citizen members, all Howard County residents, with 3 of the members receiving at least 50% of their income from agriculture, and no member serving more than 2 consecutive terms. All members are appointed by the County Executive and confirmed by the County Council. The administrator (a member of the Department of Planning and Zoning) shall be executive secretary of the board. The DPZ shall also provide staff services to the board.

The board shall meet at least once every 3 months. Five votes are necessary for recommendation of purchases.

f. Any legislation required for the PDR program to be implemented?

Originally, a parcel had to be designated in a state agricultural preservation district before an easement could be purchased. That law was repealed in 1993.
Also not required but helpful is that Maryland allows a partial property tax rebate for property on which development rights have been sold under the PDR program.

g. Amount of land protected by program and future goals

As of July 1999, 12,453 acres were protected under the county PDR IPA plan. (The earlier state program protected an additional 3937 acres). The goal for fiscal year 2000 was an additional 2500 acres, with the ultimate goal of 30,000 total acres in farmland preservation or other preservation programs. As of July 1999, the county had 21,040 of Rural West lands permanently protected in agricultural, environmental, historic, or other easements.

h. Other tools used in conservation effort

Agricultural preservation is also obtained through two additional tools:

1. Dedication from exchange option – essentially a transfer of development rights program whereby a transfer of residential density occurs from land in the Rural Conservation district to one in the Rural Residential zoning district. Sending parcels are left with one development right (one house) and covered with a restrictive agricultural or environmental easement.
2. Dedication for cluster development – conservation subdivisions are an option in the Rural Residential zone, and required in the Rural Conservation zone on parcels over

20 acres. A density of one lot per 4.25 acres is applied to the site to calculate total yield. These lots must then be roughly one acre in size and laid out to accomplish the goal (open space, agricultural preservation or environmental conservation).

These tools tend to be used more for open space and environmental preservation, with PDR's the prime tool for farming preservation. However, from 1997 to 2000, they were the only tools available for farmland preservation as well given the temporary discontinuation of IPA funding (see i.)

i. Success stories or obstacles?

The Installment Purchase Agreement program won a Government Finance Officers Association's prestigious Award for Excellence in financial management, and rejuvenated a PDR program that had come to a standstill in the 1980's as development spread west and catapulted land values beyond the means of the county to purchase easements conventionally. The IPA program gave farmers an incentive to sell easements at less than their appraised value.

However, the funding sources for the program put a cap on the amount of preservation efforts possible. The City Council authorized $55 million worth of IPA commitments bases on projections of revenue from the funding sources. Unfortunately, this amount was reached in fiscal year 1996, and no easement purchases can be made until a sufficient surplus exists. Until then, other methods of preservation as described above have been employed.

Fortunately, the County's General Plan 2000 called for a renewed emphasis on the PDR program, evidenced by its goals outlined in "g."

j. Partnerships with state agencies or other organizations involved?

An additional option for the protection of "areas vulnerable to sprawl development that can weaken an areas' natural resources, thereby jeopardizing the economic value of farming, forestry, recreation, and tourism", is available from the 1997 state of Maryland's Rural Legacy Program, a subset of Maryland's 1997 Smart Growth Act. Applications for consideration are submitted to the state, with ultimately the Board of Public Works designating the Rural Legacy Areas and approving grants for funding. Maryland Program Open Space dollars and general obligation bonds from the state's capital budget fund this program. During the first 5 years, $110 - $128 million will be committed to preserving 50,000 – 75,000 acres. Between 1998-2000, Howard County was designated to receive $3 million to purchase preservation easements in the Upper Patuxent Headwaters Rural Legacy Area.

k. Availability of written materials

- "Howard County's Agricultural Land Preservation Program" document
- Subtitle 5. Agricultural Land Preservation section of the Howard County Code
- Agricultural Land Preservation Board Easement Price Formula Worksheet
- Various legal documents regarding the program
- Comprehensive Plan (General Plan 2000), specifically Chapter 3: Preservation of the Rural West available from county's website: www.co.ho.md.us

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Sonoma County, California

North of San Francisco, Sonoma County encompasses over one million acres of hills, mountains, valleys and river drainages including the 1485 square mile Russian River Watershed. It is the 15th largest agricultural county in California, producing $450 million worth of crops in 1998, with a major emphasis on vineyards. Strong growth pressures are also occurring in the county.

a. Motivation for the program

The purchase of developments rights is one element of a comprehensive strategy for the county to maintain a positive quality of life for its residents and for future generations. It assists the District in carrying out the 1990 voter approved measures for preserving agricultural and open space lands. This public measure was a result of dissatisfaction about losing open space to urban sprawl and a desire to preserve separation between the county's cities. The program is also applicable to California state law that requires each county and city to prepare an Open Space element as part of its General Plan that addresses how preservation of open space lands will be implemented.

b. Mechanism for funding

In 1990, Sonoma County voters approved Measures A and C. Measure A established the Sonoma County Agricultural Preservation and Open Space District (whose boundaries are synonymous with the county's), while Measure C called for a ¼ percent sales tax over a 20-year period to fund agricultural preservation and open space acquisition. This provides an annual allocation of about $13 million for the District's land conservation program.

c. Length of time to develop program

Measures A and C were approved in February 1990, and the Open Space Authority followed in August of that year. The first Acquisition plan was adopted on December 15, 1992.

d. Program logistics/summary

The elements of the PDR program and entire Sonoma county land conservation plan are found in its document, Acquisition 2000. The plan contains four acquisition categories: agriculture, greenbelts, natural resources, and recreation. Within each category, priority subsets have been developed. The District has developed maps of the categories and a computerized Graphic Information System that generates "property evaluation reports" and ranks the desirability of a property's acquisition against multiple factors. All properties submitted to the District by an easement application are evaluated and visited. A list of factors that would bode favorably or negatively toward acquisition of the easement is found in the Program Goals section of the Acquisition Plan 2000.

While the PDR program is voluntary, the County is proactive in soliciting participation, particularly in the priority preservation areas.

e. Who administers the program, and what are the administrative costs and funding source?

Sonoma's program is one of the more complex in terms of administration. The District's Board of Directors (which are the County Board of Supervisors) has appointed 17 members to an Open Space Advisory Committee. This committee is responsible for advising the District Board on policy matters, and making recommendations for proposed land and easement purchases. The Sonoma County Open Space Authority is an independent entity also created by the Board of Supervisors that is responsible for levying the sales tax. It has the responsibility to ensure that the District's acquisition plan and each conservation project is consistent with the expenditure plan. The Board of Directors has the responsibility for ensuring that the District's acquisition plan and individual projects are consistent with the 1989 Sonoma County General Plan. Thus, the program involves coordination among the District's Board of Directors, the Open Space Authority, and the Open Space Advisory Committee.

f. Any legislation required for the PDR program to be implemented?

The District is a dependent Special District formed under Government Code Section 65582 and Section 5500 et seq. of the California Public Resources Code.

g. Amount of land protected by program and future goals

By the end of 2000, the District had completed 80 land conservation projects and protected over 27,000 acres through easements or fee acquisition at a cost of $50 million. The majority of these were easement purchases. The goal is to double this amount over the next 5 years.

h. Other tools used in conservation effort

Besides purchasing development rights, the District also has the authority to purchase land in fee, enabling the district to respond quickly to open space opportunities. This is primarily used for public purposes, such as a park or wildlife preserve, but can also be used when necessary for agricultural and other open space preservation.

Urban growth boundaries have also been adopted in the majority of the county's nine incorporated cities.

i. Success stories or obstacles?

The County has protected one of the largest amounts of acreage found across the country, and is one of a few to employ a sales tax for funding of the program. However, the referendum issued a 20-year limit on the tax and will have to be reapproved by voters or another revenue source found before the year 2010.

j. Partnerships with state agencies or other organizations involved?

The County actively seeks partnerships with public agencies and private organizations to complete significant acquisitions. It seeks matching funds from foundations, state and federal agencies and other conservation partners to leverage its funds. It also provides matching funds to cities within its boundaries for conservation programs.

k. Availability of written materials

The town has an excellent website of materials about its program: www.openspaceplan.org

l. Contact information

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Town of Dunn, (Dane County), Wisconsin

Dunn is a small town of 5500 people located at the southern edge of Madison, the capital of Wisconsin. It was one of the first towns in Wisconsin to develop a comprehensive plan in the 1970's and continues to be innovative in land use issues. Over 8600 acres of the town are still dedicated to agriculture.

a. Motivation for the program

To slow growth, protect important natural and historic areas, and maintain a vital farming community. Prior reliance on the town's Land Use Plan to achieve these objectives had proved insufficient. 3000 acres of farmland had been converted out of agriculture from 1978-1994, and the town's borders were prime targets for annexation from quickly growing surrounding communities. A volunteer committee was formed to explore options for open space and farmland protection. PDR's were chosen as an allay against changes in political leadership, as well as effectively integrating farmland / natural resource protection with agricultural economics.

b. Mechanism for funding

In 1996, town residents approved a property tax increase raising the mill rate $.50 to fund the program. However, this source provides the ability to purchase only 80-100 acres per year. The town also seeks donations and grants, and has received $615,000 in federal matching grants from the United States Department of Agriculture – Natural Resource Conservation Service. Voters approved a $2.4 million bond initiative in April 2000. The existing PDR tax will make payments on the bond, allowing an infusion of cash into the PDR fund without any increase in taxes.

c. Length of time to develop program

Three years from conception of volunteer committee to approval of first tax levy for funding.

d. Program logistics/summary

An interested party submits a nonbinding preapplication form to the Town Hall. Members of the Land Trust Commission will then discuss the PDR program with the party and obtain site feature information. These are done in batches. Once all applicants have been contacted, the LTC ranks the properties according to a documented criteria formula. Those with the highest scores will be asked to meet again with the Commission to discuss terms. Flexibility for the landowner is supported. Once general terms have been identified, the town has an appraisal conducted for the value of the easement. This is the difference between the existing agricultural use and the value of the site at its maximum developable state. Negotiations then occur. Prior to the final transaction, a Special Town Meeting is held to authorize town purchase of the easement.

e. Who administers the program, and what are the administrative costs and funding source?

The Town of Dunn Land Trust Commission is responsible for general supervision of the Open Space (PDR) program. It solicits interest in landowners for application to the program, recommends selection criteria and potential specific sites for easement purposes, recommends changes to the overall program as necessary, and conducts public communications meetings.

It consists of 7 members: The chair of the town's planning commission, a representative of a Dane Country nonprofit conservation organization, four members and Commission Chair nominated by the Town Chair, with at lease 3 members electors of the town.

The Town of Dunn's Board of Supervisors, however, is the entity with the authorization to acquire conservation interests or make payment to nonprofit conservation organizations for rural preservation purposes.

The 2000 town budget shows the following costs of administration of the program:

1. $18,000 salary
2. $18,000 operating expense
3. $15,000 endowment for future enforcing and monitoring expenses

f. Any legislation required for the PDR program to be implemented?

Wisconsin has adopted the Uniform Conservation Easement Act, which allows governmental and charitable organizations to buy development rights. The town adopted ordinance No. 4-3 to establish the PDR program and create the Town of Dunn Land Trust to administer it.

g. Amount of land protected by program and future goals

From 1997 through 2000, 995 acres have been protected. Contracts are in negotiation on an additional 644 acres, with applications for 1406 acres pending.

h. Other tools used in conservation effort

None.

m. Success stories or obstacles?

The town is the only municipal PDR program in the state, and has responded to over 200 requests for assistance and information from other government officials and citizens. It received the Renew America award in 2000 for its PDR program. It demonstrates the strong commitment of the town's residents to the goals of this program.

n. Partnerships with state agencies or other organizations involved?

The town attempts to leverage its resources by partnering with the USDA-NRCS, the Wisconsin Department of Natural Resources, and two local land trusts.

o. Availability of written materials

The town has an excellent website of materials about its program:
//userpages.chorus.net/towndunn

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Lancaster County, Pennsylvania

Lancaster covers 603,000 acres in southern Pennsylvania, with two-thirds of this in agriculture in 1992. It contains some of the most productive farmland in the U.S. About 30% of the farmers belong to the Plain Sect community (Amish, Mennonite, and Brethren). With a population of 422,000 in 1992, it is projected to increase to 600,000 by 2020. Greater Harrisburg, Wilmington, Delaware, and Philadelphia are all within a 45-minute drive from its borders.

a. Motivation for the program

The county generated over $750 million in farm gate sales in 1993, largest in the northeast U.S. Over 50% of the county has Class I and II soils, considered prime farmland. The county's open space contributes to a thriving tourist industry, with its role as a vital Dutch region. However, in 1994, the county was rated by U.S. News and Report as one of the top ten booming areas in the U.S. The visible loss of farmland (a strong economic sector), loss of open space, and traffic congestion led to a residents desire to control growth.

b. Mechanism for funding

The state Act 149 mentioned below (f) followed a 1987 referendum in which voters approved a $100 million bond program to purchase development rights to farmland. The referendum passed 2 to 1. In 1994, program funding switched from bonds to a 2 cent a pack tax on cigarettes. This tax generates about $21 million / yr.

The county's program started prior to the state initiative. It funded its first easements from the county general fund. After 1988, funding was made available to the county from the Pennsylvania Bureau of Farmland Protection. From 1989 – 1998, Lancaster received $27.2 million for easement purchases. In order to receive these funds, the county first had to develop program guidelines approved by the State Agricultural Land Preservation Board, an appointed 17-member body. The allocation by county was determined by the appropriations made by each county and by the money appropriated by all counties with approved guidelines. Lancaster appropriated $1 million / yr, more than any county in the state. It raised these funds through the sale of general obligation bonds and from the county general fund.

c. Length of time to develop program

Two years from creation of the Agricultural Preserve Board to the first donation of an easement. An additional two years until the county purchased its first easement.

d. Program logistics/operating procedures

The program operates in the same general manner as other PDR programs. However, in determining which sites to purchase easements on, the Preserve Board uses two policies to guide its selection: preservation of contiguous farms, and preserving farmland that creates an "urban boundary". The first policy is intended to help maintain a core base of farming large enough to keep agricultural support business economically viable, and minimizes the potential for farm / nonfarm conflicts. The second helps to reinforce the urban boundary program (see h).

e. Who administers the program, and what are the administrative costs and funding source?

In 1980, the Lancaster County Commissioners appointed a nine-member Agricultural Preserve Board to develop and administer farmland protection programs, including the procurement process. In 1983, the Preserve Board added staff and became a county department. Today, it has a staff of four, including a Director, two farmland preservation specialists, and a secretary.

f. Any legislation required for the PDR program to be implemented?

The state of Pennsylvania Act 149 in 1988 created a joint county-state conservation easement purchase program, which created the funding impetus necessary for counties to realistically provide this program.

g. Amount of land protected by program and future goals

From 1982 to 1998, the county purchased 229 perpetual easements covering 20,367 acres. An additional 1965 acres are protected from donated easements.

h. Other tools used in conservation effort

Agricultural preservation is also obtained through three additional tools:

1. agricultural zoning – most townships employ a zoning standard of one building lot of up to two acres for every 25 acres owned
2. agricultural security areas – the landowner can voluntarily enroll his land (250 acre minimum) into this program, with township supervisor approval. No land use restrictions are imposed, but the township agrees: not to enact nuisance ordinances involving farming practices; that the landowner has greater protection against eminent domain; and the landowner becomes eligible to apply to sell their development rights.
3. urban growth boundaries – geographical boundaries are drawn though and agreement by a city and surrounding townships with the aim of providing enough buildable land for the next 20 years within the boundary. Urban services are not provided outside the boundary. Boundaries can be changed upon review every 3-5 years. 20 boundaries had been formed by 1998.

h. Success stories or obstacles?

When the program first started in 1982 and without a viable funding source, the Board was only offering $250 and acre for perpetual easement or 25 year term easements. This was well below the value of the permanent development rights, so most landowners opted for the 25-year term. In 1988, however, the Board authorized the use of appraisals to determine the easement value, and the average price per acre jumped to $2000, resulting in better program success.

In fact, since 1991, the amount of farmland preserved through conservation easements has slightly outpaced the number of farmland acres lost.

The psychology of farmers seeing others being conserved has also helped to convince some of remaining in farming.

One obstacle is that in Pennsylvania, there are no property tax advantages to landowners selling an easement.

i. Partnerships with state agencies or other organizations involved?

PDR programs in Pennsylvania are combination state-county efforts. The more a county is willing to invest in the program, the more funding it receives.

The county also has a cooperative agreement with the Lancaster Farmland Trust, a private, nonprofit organization. Two farms have been jointly preserved.

j. Availability of written materials

Meeting minutes of the Agricultural Preserve Board are available from the county website: www.co.lancaster.pa.us/Agpresrv.htm.

Most of the information for this summary was found in a paper by Tom Daniels, State University of New York at Albany, "*The Purchase of Development Rights, Agricultural Preservation and Other Land Use Policy Tools: The Pennsylvania Experience*".

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