

LOCAL FUNDING OPTIONS FOR OHIO FARMLAND PROTECTION

*A Summary of Existing and Potential Options under Ohio Law for Funding a Local
Farmland Protection Program*

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INTRODUCTION

There is growing interest in Ohio for farmland protection at the local level. With several state and federal programs recently instituted such as the Ohio Agricultural Easement Purchase Program and the Ohio Agricultural Security Area Program, Ohio local governments are now turning their attention to local efforts that can retain farmland. An unavoidable question these local governments must ask when considering farmland protection is that of funding. How can a local community pay for farmland retention programs? What sources of revenue can a local government pursue for farmland protection? In this policy brief, we address the funding question by providing an overview of opportunities to raise funds to establish or expand farmland protection programs.

The brief contains four sections. First, we explain taxes, fees and bonds that can generate revenue for farmland protection. These options are currently available under Ohio law. In the second section, we identify existing ways to raise funds through partnerships with agencies, organizations, private developers and citizens. Part three summarizes potential funding devices that could provide revenue sources for counties and townships upon specific authorization from the state legislature. In the final section of the report, we offer thoughts on assessing funding feasibility and maximizing farmland protection funds. Throughout the brief, we present “It’s Been Done” stories—descriptions of communities that have adopted the revenue sources we describe. These stories provide a sampling of successful funding efforts in Ohio and other states.

By “farmland protection”, we not only refer to the purchase of agricultural easements, but also to other means of establishing a long term farmland base for a community, such as planning, education, agricultural economic development and program establishment. We focus this report on discretionary local revenue streams, both existing and future, that communities can make available for any of these farmland protection efforts. State or federal revenues are

not specifically addressed in this report.

Because of the distinct differences in enabling law for Ohio local governments, we explain only those mechanisms available specifically to township and county governments. Municipalities should also find this piece useful, but must note that this listing is not comprehensive for municipalities. Many of the “potential” options we present are currently available to Ohio municipalities through the broader powers and home rule authority granted by Ohio law.

ABOUT THE CENTER:

Established in 2006, the mission of The Ohio State University’s Center for Farmland Policy Innovation (CFFPI) is to enable Ohio local governments to achieve farmland protection priorities. The Center provides educational programming and partners with Ohio communities on innovative farmland policy projects. Our policy briefs are developed in conjunction with local government roundtable discussions, and are available with other resources on the CFFPI web site, <http://cffpi.osu.edu>. Please visit our web site to learn more about the Center and other opportunities we offer.

PART I. EXISTING OPTIONS FOR LOCAL TAXES, FEES AND BONDS

Ohio counties and townships may currently utilize the following sources of revenue under Ohio law for farmland protection purposes. It is important to understand that Ohio law now directly addresses funding authority for farmland protection programs that include the purchase of agricultural easements. The Ohio legislature granted specific funding authority in 1999 with Senate Bill 223, now incorporated into many different sections of the Ohio Revised Code (ORC). The bill explicitly authorized counties, townships and municipalities to acquire, hold and purchase agricultural easements and to utilize particular revenue sources for agricultural easements. We identify these revenue sources and point out the applicable sections of law that derive from S.B. 223.

Several of the options we present require new or additional tax levies. The laws governing tax levies are complex, requiring careful consideration and analysis by the taxing subdivision. Our explanation does not purport to address all limitations, considerations and procedural issues that accompany a tax levy, but is only a summary of tax opportunities available to local governments for farmland protection purposes.

1.1 General Fund Appropriations

A political subdivision may use its general fund for local farmland protection pursuant to the appropriations procedure in Chapter 5705 of the ORC, provided that the funds are not required to be used for another purpose. Additionally, general fund appropriations for the purchase of agricultural easements are explicitly authorized in ORC 5301.691(B)(1), a result of S.B. 223's agricultural easement provisions.

Note that many of the taxes and fees described in the remainder of Part I are deposited into the general fund. A general fund appropriation for a

farmland protection purpose, then, is the logical second step to the assessment of the tax or fee.

IT'S BEEN DONE...

The Board of Commissioners in Knox County, Ohio has made two appropriations from its general fund for farmland protection. In 2005, the commissioners allocated \$110,000 from existing monies to provide matching dollars for the county's highest scoring applications to the Ohio Agricultural Easement Purchase Program (AEPP). The commissioners first approved a \$100,000 allocation, but upped the amount by \$10,000 to increase scores for the applications in the competitive AEPP program. Two Knox County applications were selected by the state for the program, resulting in the purchase of agricultural easements from the landowners. The county's \$110,000 allocation served as matching funds toward the total purchase price for the easements. In 2006, the commissioners again utilized general fund monies for AEPP applications. The county appropriated \$50,000 towards AEPP, which was applied to the final purchase price on two farms that were selected for the program. Both general fund appropriations came at the request of two local non-profit organizations, Philander Chase Corporation and Owl Creek Conservancy, who worked with the landowners to submit the AEPP applications.

1.2 Real Property Tax Levies

The Ohio Constitution allows the government to tax up to one percent of the true value of real property—or ten mills—without voter approval, referred to as the “ten mill limitation on inside mills.” Where property taxes exceed the ten mill limitation, the local government must submit additional tax levies to district voters—referred to as “outside mills”—but can do so only if the purpose of the levy is one authorized by statutory law. ORC 5705.03. A local government considering the use of real property taxes for farmland protection will most likely confront the

“ten mill limitation” and will have to seek funds by way of a voter approved real property tax levy.

Three separate provisions of ORC 5705.19 authorize an outside mill tax levy that could be used for farmland protection purposes. The most direct provision is ORC 5705.19 (RR), a result of the 1999 agricultural easement provisions in S.B. 223, which allows a municipality, county or township to submit a tax levy in excess of the ten mill limitation specifically for acquiring, monitoring and enforcing agricultural easements. Farmland protection could also be funded through a township open space levy. ORC 5705.19(HH) permits a township to submit an “open space” or “green space” levy to voters for the purpose of protecting natural, scenic, open and wooded conditions from modification or encroachment by acquiring ownership in land, water or wetlands. Note that the open space levy may not be used for recreational purposes—those purposes are addressed in 5705.19(R), which authorizes political subdivisions to submit a levy for parks and recreational purposes. Farmland protection could be a component of a park program that receives funding from this type of levy.

An additional levy provision to consider for farmland protection is ORC 5705.19(EE), which allows a county to seek a levy to fund an office of economic development created pursuant to ORC 307.37. The statute defines economic development as “promoting the economic welfare and improving the economic opportunities of the people in the county... by assisting in the establishment or expansion within the county of industrial, commercial, or research facilities and by creating and preserving job and employment opportunities for the people of the county or counties.” A county thus could fund a program targeted to agricultural economic development through an economic development levy. The levy provision offers opportunities to advance farmland protection in new ways.

In all of the above instances, the tax levy law restricts the use of funds to the designated purpose of a levy and limits a levy to a five year

duration. There are many procedural steps, not addressed by our brief overview, that a political subdivision must take when proposing a tax levy.

IT’S BEEN DONE...

Granville Township in Licking County, Ohio became one of Ohio’s first communities to utilize an open space levy when voters approved a one mill levy in 1998 for open space acquisition. A few years later, a group of residents asked the township to place a second open space levy on the ballot. Citizens approved the second levy for 2.5 mills in 2000. Both levies have since been renewed by voters, and the one mill levy is up for a second renewal. The township receives approximately \$700,000 per year from the levies for the township’s open space program, which includes protection of agricultural lands as a program goal. A community based citizen group helps guide township trustees on strategies for acquiring open space. To date, the township has purchased 753 acres of land and easements through its open space program.

Voters in Acme Township, Michigan passed a ten year, one mill property tax increase for agricultural conservation, open space, and farmland acquisition in 2004. The tax will yield \$2.5 million over the ten year period. Experts believe Acme Township succeeded in passing the levy because of extensive one-on-one resident education that included public meetings with speakers from nationally recognized farmland protection programs across the country. The township has used the funds to hire a farmland preservation specialist in partnership with nearby Peninsula Township, to develop a farmland preservation ordinance in conjunction with Grand Traverse County, and to establish a Purchase of Development Rights (PDR) Program. Currently in its first application cycle, the PDR program has received applications from landowners covering nearly 900 acres of farmland in the township’s key agricultural corridor.

1.3 Sales and Use Taxes

The permissive sales and use taxes are another substantial revenue source for Ohio counties. Although written as two different taxes under Ohio law, the two are enacted simultaneously. Retail sales taxable under the state's sales tax are the basis for the county sales tax, and the use, storage or consumption of motor vehicles, watercraft or outboard motors is the basis for the county's use tax.

Two sales and use tax options are available to counties, and the aggregate total of the taxes may not exceed one and one-half percent. First, a county may levy a sales and use tax of one-quarter to one percent to provide revenue to its general fund. Second, the county may also levy an additional sales and use tax of one-quarter or one-half percent, but only for certain purposes. ORC 5739.021, 5739.026, 5741.021 and 5741.023. One allowable purpose is for agricultural easements. In 1999, S.B. 223's agricultural easement provisions authorized the purchase, monitoring and enforcement of agricultural easements as a legitimate use for an additional sales and use tax. ORC 5739.026(A) (9).

IT'S BEEN DONE...

Sonoma County, California, is distinguished by its use of the sales tax to finance farmland protection. Voters approved two separate tax measures in 1990, one to create the Sonoma County Agricultural Preservation and Open Space District and one to implement a quarter-cent sales tax to fund the district's efforts for 20 years. Providing the exclusive funding for agriculture and open space easements, the tax generates around \$17 million each year, and even without assistance from state and federal programs, Sonoma County ranks in the top five easement programs nationally with more than 43,000 acres protected.

1.4 Real Property and Manufactured Home Transfer Taxes

Ohio law requires the county auditor to charge a one mill fee on each deed in the county that conveys real property or an interest in real property and on each title conveying a used manufactured or mobile home. This fee is referred to as the "transfer fee" or "conveyance fee." ORC 319.54(F)(3). The mandatory transfer fee revenues go into the county's general fund. An opportunity for farmland protection funding is in the additional permissive authority the law gives to counties. Counties may increase the transfer fee for the purpose of providing additional general revenue for the county. According to ORC 322.02, the county commissioners by resolution may raise the transfer fee up to three additional mills, or 30 cents per \$100 of property value. The county must deposit the conveyance fee revenue into the county general fund, minus costs for collection and enforcement of the tax, and the funds may then be expended for any general fund purpose, such as farmland protection. ORC 322.03.

IT'S BEEN DONE...

In Harford County, Maryland, voters approved a one-half percent increase in the local real estate transfer tax to provide a dedicated source of revenue for farmland preservation. Passed in 1993, the tax generates about \$3.5 million each year to fund the county's Purchase of Development Rights and Installment Purchase programs. Combined with participation in state-backed farmland protection programs, the county has preserved more than 37,000 acres along the upper Chesapeake Bay with the revenue.

1.5 Estate Taxes

Legislative changes to Ohio's estate tax law in 2002 decreased the amount of income currently available to local governments from the Ohio estate tax, but it remains a potential source of revenue for farmland protection. The State of

Ohio assesses the tax on the gross value of a decedent's estate and distributes 80% of the gross tax to the general fund of the municipality or township in which the estate tax originates. ORC 5731.48. The municipality or township may appropriate the funds for any of its legitimate purposes.

IT'S BEEN DONE...

Elizabeth Township in Miami County, Ohio is using estate tax revenue to establish a local agricultural easement purchase program. An unusually large estate settlement in the township provided a significant source of revenue that the township has dedicated for the program. In Greene County, Miami Township trustees have used the estate tax as a dedicated source of revenue for matching dollars for the federal Farm and Ranchland Protection Program.

of agricultural easements, except for bond issuance and financing costs.

IT'S BEEN DONE...

In 2000, the county commissioners of Berks County, Pennsylvania, approved a \$33 million bond for farmland preservation. The funds are used to purchase agricultural easements in the county. With more than 40,000 acres preserved, the county has one of the top ten local agricultural easement programs in the country. The success of the program is credited not only to its dedicated revenue source but also to the integration of smaller political subdivisions within the county. Berks County actively works with townships on planning and zoning issues and provides fiscal incentives to promote participation in easement purchases. Additionally, half of the townships and municipalities in the county have agricultural protection zoning, which helps stretch funding by limiting growth in heavily-farmed areas.

1.6 Revenue Bonds

The agricultural easement provisions of S.B. 223, passed in 1999, grant express authority to a county to issue revenue bonds for the purpose of acquiring agricultural easements. ORC 133.60. Revenue for repayment of the bonds may be pledged from the county sales and use tax (see Section 1.3, above) but the bonds must not mature after the period of the tax. The county must follow Ohio's uniform bond law, ORC Chapter 133, and all of the bond money beyond issuing and financing costs must go toward the acquisition, monitoring, supervision and enforcement of agricultural easements.

1.7 General Obligation Bonds

A second bonding provision instituted by S.B. 223 allows counties, municipalities and townships to issue general obligation bonds to finance agricultural easements pursuant to ORC 133.61. In so doing, the political subdivision must abide by Ohio's uniform bond law, and must use all funds exclusively for the acquisition

1.8 Permissive Lodging Taxes

A complex set of laws in Ohio establishes permissive authority for lodging taxes, but only a few of its provisions are applicable to farmland protection funding. Municipalities and townships have had authority since 1967 to assess a three percent lodging tax to be used "for any lawful purpose." ORC 505.56 and ORC 5739.09. The tax may be imposed by resolution without voter approval.

In 1980, the Ohio legislature gave counties a window of opportunity for establishing an "additional" lodging tax of three percent; after July 1, 1980, municipalities and townships could levy the additional lodging tax if the county had not done so. Opportunities to use the additional lodging tax for farmland protection revenue are limited by the restrictions in revenue allocation. The law requires that at least 50 percent of a township or municipality's additional lodging tax must be contributed to a convention and visitors bureau, with the remainder to be used "for any

lawful purpose.” Counties are further limited in additional lodging tax utilization. The county must allocate no more than 33.3% of the additional tax to a municipality and/or township that does not have a lodging tax but does have hotel or motel rooms in its jurisdiction, and the remainder to a local convention and visitor’s bureau. While funds are somewhat restricted, the tax does offer possibilities to address farmland protection through “agri-tourism” and other tourism development methods.

1.9 Utilities Service Taxes

Although authorized to do so by Ohio law since 1967, no county has ever enacted the Utilities Service Tax. Ohio law allows a county to levy a tax of up to two percent on every utility service provided to consumers within the county, with business customers paying 150% of the consumer rate. ORC 324.02. Utility services include those services that supply water, steam or air through pipes or tubing for heating or cooling purposes; electricity; artificial gas; natural gas and telephonic and telegraphic messages. ORC 324.01. The county may use the tax proceeds to provide additional general revenues.

IT’S BEEN DONE ...

The City of Virginia Beach, Virginia assesses a ten percent tax on the first \$30 of residents’ monthly cellular phone bills. The cell phone tax revenues go into the general fund and a portion are earmarked for the city’s Agricultural Reserve Program, which also receives dedicated property tax revenues. Total cell phone tax dollars have increased from under \$2 million in 1999 to nearly \$8 million in 2006. The city established its Agricultural Reserve Program in 1995 and has purchased agricultural easements in the city using installment payment plans (see Section 4.2, below). To date, Virginia Beach holds easements on over 7,000 acres of farmland.

PART II. GENERATING REVENUE THROUGH PARTNERSHIPS

Many innovative and exciting opportunities for farmland protection exist for local governments willing to collaborate with other governments, government agencies, non-profit organizations, private industry and citizens. We explain below those partnership opportunities that are currently available under Ohio law. Several of these options require careful analysis and planning, but they offer local governments new ways of addressing farmland protection priorities and needs.

2.1 Soil and Water Conservation Districts

In Ohio, many county Soil and Water Conservation District (SWCD) offices are actively involved in farmland protection. Recent amendments in 2005 to ORC 5301 authorized SWCDs to acquire, hold and purchase agricultural easements and permitted the board of supervisors of a SWCD to purchase agricultural easements “with moneys in any fund not otherwise required by law to be used for other specified purposes.” ORC 5301.691(C)(1). This new authority to allocate money for and hold easements combined with the unique relationships SWCD offices have with agricultural landowners make the SWCD a logical farmland protection partner for local governments. In addition to collaborating on easement programs, a local government could partner with SWCD for other farmland protection needs such as specialized staff and educational programs.

IT'S BEEN DONE...

In Ohio, the Lake County Soil and Water Conservation District was the first in the state to employ an Agricultural Programs Specialist. Consistent with the SWCD's strategic planning goal of guiding private land preservation and conservation, the specialist works with landowners, public agencies, organizations and communities to maximize participation in state and federal programs that facilitate farmland preservation and agricultural sustainability. The position evolved from the efforts of a local advocacy group, the Lake County Farmland Conservation Task Force. Funding for the position originally arose from a private grant and an appropriation from the county. Upon expiration of grant funding, the county agreed to fund the full-time position.

2.2 New Community Authorities

The New Community Authority (NCA) is a legal mechanism for creating well planned development in an area. This tool promotes collaboration between government and development interests to ensure that new development is economically sound and can meet its own community needs, which could include farmland protection priorities.

Chapter 349 of the Ohio Revised Code establishes the New Community Authority. The law allows a "developer" of at least 1,000 acres to petition the county for creation of a New Community District that will be governed by its own board of trustees. Note that a "developer" is the owner of the land encompassed by the district and can be a private person, municipality, port authority or county. The petition must include a Community Development Plan for the district, including plans for land acquisition, land development, community facilities, infrastructure and services, and the proposed method for financing the development plan. The county, after public hearing and with approval of the largest city in the county, authorizes the NCA by resolution if it finds that the NCA will accomplish the proposed

IT'S BEEN DONE...

Many Ohio cities struggling to keep up with development and growth have turned to community authorities. In central Ohio alone, five community authorities oversee the development on the outskirts of Columbus with several more proposals in the works. The New Albany Community Authority, established in 1995, has provided more than \$35 million of bond financing for new schools, roads, and fire services. Bond repayment is funded by a uniform, millage-based development charge. In Delaware County, the Liberty Community Infrastructure Financing Authority has issued approximately \$7.35 million in bonds, which will be repaid by a uniform 8.75-mill community development charge.

The City of Columbus established the RiverSouth Authority to provide funding for downtown renovation, including the Lazarus building and several parcels nearby. The RiverSouth Authority has issued approximately \$38 million in bonds, which will be repaid with lease-rental payments made by the City of Columbus. In addition, Columbus is proposing two authorities to support its Pay-as-We-Grow program, which would levy a uniform community development charge of 4 mills lasting for 20 years on each parcel to provide for various public services and facilities.

development and will be conducive to the public health, safety, convenience and welfare.

The ability to predetermine the needs of the district and generate the revenue necessary to meet those needs is an appealing feature of the NCA. To finance the planned development of the district, the NCA has the power to levy a community development charge on new owners, which runs with the land and may be assessed on valuation, area, or income. The NCA may issue bonds and notes and may also charge user fees, rental and other charges to cover the costs of leasing, purchasing, and maintaining community facilities in the district. Those who buy property in the district do so with full knowledge of the community develop-

ment charge and other fees, and with assurance that there is a plan in place for addressing and financing the community's needs.

The NCA offers the potential to plan for farmland in new ways by including farm resources and services in a Community Development Plan. The law states that “community facilities” provided in a district can include open space lands, so community revenues could be utilized to acquire farmland or easements on farmland. “Community facilities” can also include town centers and plazas—opportunities for planned farm market outlets. An NCA could capitalize on the rising interest in locally produced foods to create a local food system for residents. In addition to providing farmland's traditional amenities such as open space and a rural landscape, an NCA could also ensure residents of access to farm products while creating economic development prospects for local farms.

2.3 Joint Economic Development Districts

A third option for collaboration among community parties is the Joint Economic Development District (JEDD). A JEDD is a contract between one or more townships and one or more municipalities to facilitate and control development in a targeted area. Parties can utilize a JEDD to identify and plan a business growth area, provide economically efficient services to the area, and share local revenues from development in the area. Revenues from the JEDD can be used to fund local farmland protection programs.

ORC 715.69 to 715.90 governs the JEDD process. The parties identify the JEDD territory, typically land within the township that is contiguous to at least one of the municipalities participating in the JEDD, although the JEDD cannot include existing residential areas or areas zoned for residential use. To form the JEDD, the parties draft a contract that addresses the provision of police, fire and road services; zoning, land use and planning issues; and agreements on tax abatements and division of the JEDD income tax. Although counties are not

original parties to the JEDD, any county in which the JEDD is located may enter into an agreement with the contracting parties regarding the provision of services

A board of directors governs the JEDD and consists of representation from the municipality, the township, and businesses in the JEDD. Ohio law gives the board authority to levy income taxes at a rate up to the municipality's rate. The JEDD parties share the income tax revenues, based on a formula identified in the contract, with an amount being set aside for the long term maintenance of the JEDD. The parties are also permitted to negotiate the sharing of other tax revenues.

The JEDD retains power to determine zoning and other land use regulations, building codes and permanent public improvements, to limit and control annexation of unincorporated territory within the JEDD, and to limit the granting of property tax abatements and other tax incentives within the JEDD.

IT'S BEEN DONE...

In Lorain County, Ohio, Pittsfield Township and the City of Oberlin created a JEDD to support each other in a plan for local development. Under the terms of the contract, 20 percent of the township outside of the city limits has been designated as a development zone for expansion of the city. The township has agreed not to oppose annexation in the development zone and will also discourage development on farmland in the township. In exchange, the township will receive a share of Oberlin's tax receipts for 50 years, including 18 percent of the city's withholding from commercial payrolls and 2.35 mills of property tax on non-residential areas. The JEDD negotiations also spurred a land use development plan for the township that features smart growth principles.

2.4 Cooperative Economic Development Agreements

A second contracting power that allows municipalities and townships to collaborate on development is the Cooperative Economic Development Agreement (CEDA). We present the CEDA as a source of revenue for local farmland efforts due to its potential to generate economic development while allowing for economically efficient provision of public services in growth areas and for its revenue sharing capabilities. Unlike many other options in our report, the CEDA does not create a new mechanism for direct revenue generation, however.

The Ohio Revised Code grants authority to municipalities and townships to enter into a CEDA to facilitate economic development and create or preserve jobs in designated commercial and industrial areas. The CEDA is initially between one or more municipalities and one or more townships, but counties, private parties and state government agencies may become parties to the CEDA with permission of the original contracting parties. ORC 701.07.

A CEDA must indicate the territory it covers, but other requirements for the agreement are permissive, allowing for local considerations, concerns, policies, and goals to be reflected in the agreement. The CEDA is more flexible than a JEDD. The CEDA may include terms such as provision of services and permanent improvements, payment of service fees, issuance of industrial bonds and bonds for public purposes, allocation of debt service on bonds, limitations on annexation of unincorporated property in the CEDA, land in the CEDA that will be annexed, and sharing of revenues. ORC 701.07(C).

In addition to protecting farmland through economic provision of services in targeted growth areas, the CEDA can address farmland retention and development by including agriculture as a component of the CEDA. Land within the CEDA may be designated and planned for agricultural development that focuses on agriculturally based businesses and industries.

IT'S BEEN DONE...

In central Ohio, Violet Township and the Village of Canal Winchester broke new ground by establishing a CEDA district comprised of more than 800 acres of prime industrial and commercial property. After years of negotiation, the agreement took effect in November of 2005. The agreement addresses infrastructure and services in the area and provides for mutual benefits. Key provisions of the CEDA include annexation guidelines, joint infrastructure planning and improvements, joint provision of road, fire protection, rescue, water, and sewer services, and incorporation of agreed upon development standards. Additionally, Violet Township receives 20% of Canal Winchester's income tax revenues.

2.5 Tax Increment Financing

Tax Increment Financing (TIF) provides local governments with a way to fund public infrastructure improvements that are associated with new development. ORC 5709.73 et seq (townships) and 5709.77 et seq (counties) authorize political subdivisions to redirect funds for such improvements without requiring a tax increase. The TIF process presents the opportunity for townships and counties to address farmland retention through planned financing of agricultural development. TIF is quite complex, however, and requires careful analysis and negotiation by the local government.

To use TIF, public infrastructure improvements necessary for a proposed new investment must first be declared to have a "public purpose" by local officials. ORC lists several examples of acceptable public infrastructure, such as environmental remediation and land acquisition; however, the list is not exhaustive. When TIF is created, property values are frozen for a specified period of time and the presiding political entity exempts from real property taxation up to 75% of the value added to parcels due to new investment in the TIF area. The TIF taxpayer

makes payments to a designated fund rather than to the local government's general fund. The local government uses the designated fund to retire the debt incurred for the infrastructure improvements in the TIF area.

IT'S BEEN DONE...

Elkhart County, Indiana, developed an innovative tax increment financing (TIF) program to fund farmland protection. The county used TIF to address rising property tax rates. The Elkhart County plan earmarks the revenues generated by future tax increases on real property and depreciable personal property, such as livestock, tractors, and other agricultural equipment, to pay for the capital outlays of economic development and, in this case, farmland protection. Revenues from the voluntary TIF district will be channeled into a special account until there is enough money to begin acquiring easements and undertaking other agricultural economic development projects, such as improvements to roads and drainage systems. So far, the county has approved one TIF district, the Middlebury South Agricultural Economic Development Area, which includes six farms covering more than 800 acres.

PART III. POTENTIAL REVENUE OPTIONS REQUIRING ENABLING AUTHORITY

Additional local funding sources could be made available to local governments with appropriate statutory action by the Ohio legislature. While the possibilities for new funding sources are nearly endless, we've chosen to focus on two types of potential revenue sources—those that have a relationship to farmland protection and those that are in place in other states, despite lacking a strong connection to farmland protection. Legal experts might argue that some of these options are already permissible under current Ohio law. All would likely agree, however, that state legislative action is necessary to *clearly authorize* the use of these sources by county and township governments and to create greater legal certainty for local governments.

3.1 Current Agricultural Use Valuation Recoupment Fees

Ohio law allows for a differential real property tax assessment on land used for agriculture. The Current Agricultural Use Valuation (CAUV) program assesses tax on qualifying agricultural lands at a lower tax rate than the market value rate. ORC 5713.30 et seq. With a few exceptions, the differential assessment applies only to lands currently "devoted exclusively to agriculture." A landowner who converts land enrolled in the CAUV program to a different land use must pay the county a "recoupment fee" equal to the tax savings on the land for the prior three years. Ohio law requires the county to distribute the recoupment fee in the same way as property taxes.

Two legislative actions could create additional revenue from the current recoupment fee. The first is expansion of the period upon which the fee is calculated. Currently, a landowner pays the CAUV tax savings for the prior three year period if the land is converted and is no longer eligible for the CAUV program. An increase from a three to five year period for the penalty,

according to a 2004 report by the Ohio Field Office of American Farmland Trust, would raise an additional \$4.7 to \$7 million in the state, and an expansion to a seven year recoupment fee period would provide Ohio counties with at least \$9.4 to \$14 million in revenue. Sara Nikolic, American Farmland Trust (2004), *Preserving Ohio's Farmland, A Report of Recommendations to the Ohio House Subcommittee on Growth and Land Use*.

A second option for additional revenue is to allow counties to assess a penalty against landowners who misuse the CAUV program by claiming and receiving the differential assessment on "ineligible" land. Both CAUV recoupment fee options require statutory changes to ORC 5713.30 et seq.

3.2 Impact Fees

An impact fee is a charge on new development assessed by a political subdivision to pay for or offset public capital costs outside of the development area. While there is currently no statutory law specifically authorizing impact fees, municipalities have relied on home rule authority to establish impact fee ordinances. A few of these ordinances have met with legal challenges to the constitutionality of the impact fee. Guided by United States Supreme Court decisions on the issue, the Ohio Supreme Court has clarified that municipalities in Ohio may institute impact fees where there are reasonable relationships between the fee, the capital improvement for which the fee will be used, and the benefits that will accrue to the person who pays the fee. *Home Builders Assoc. of Dayton v. Beavercreek*, 89 Ohio St. 3d 121 (2000).

Because counties and townships do not have home rule authority, many argue that enabling legislation is necessary to allow counties and townships to assess impact fees. A bill recently proposed in the General Assembly would provide specific authority for counties, townships and school districts to initiate impact fees for capital facilities and project improvements. H.B. 299, 126th General Assembly.

Even with enabling authority, a county or township must craft an impact fee ordinance to withstand possible constitutional challenges. The ordinance must establish a reasonable relationship or "nexus" between the impact fee, the farmland protection use, and the benefit provided to the party paying the impact fee.

3.3 Impervious Cover Fees

New development typically increases the amount of impervious cover in an area. Impervious cover is a durable surface that prevents the infiltration of surface water, such as roofs, sidewalks, paved driveways and parking lots. Impervious cover sends surface water through storm water systems and prevents infiltration and underground aquifer recharge. Farmland, on the other hand, is permeable and can ensure replenishment of aquifers. The relationship between farmland and aquifer protection could form a basis for justification of an impervious cover fee to fund farmland protection programs. In Ohio, enabling legislation could clarify authority for a local government to gain revenue from impervious cover fees for farmland protection programs.

3.4 Taxes on Tobacco Products, Alcoholic Beverages and Retail Foods

Permissive authority to tax cigarettes, tobacco products and alcoholic beverages exists for counties under several sections of the Ohio Revised Code. The law requires, however, that the county seek voter approval for the taxes and that the monies be used for costs related to constructing, marketing or making improvements to a major league sports facility in the county. There are also limitations on the amount and term of the taxes. ORC 307.697, ORC 4301.102, 4301.421—423, ORC 5743.024. According to the Ohio Department of Taxation, few counties have enacted the permissive tobacco and alcohol taxes

Similar authority once existed in Ohio law for certain counties to tax retail foods consumed on

the premises. The law authorized any county with more than one million residents to initiate a retail food and beverage sales tax for goods consumed onsite, with proceeds to fund a convention center. The tax had to be enacted prior to August 30, 2004 and approved by the voters. ORC 307.676.

These types of taxes offer opportunities for farmland protection funds. Statutory changes are necessary, namely to authorize enactment of the taxes for the specific purpose of farmland protection programs.

IT'S BEEN DONE...

In 1993, Pennsylvania added a two cent per pack tax on cigarettes to fund the state farmland preservation program, which yielded about \$20 million per year. To stabilize the funding source, Pennsylvania chose in 2002 to dedicate a flat \$24.85 million per year of the cigarette taxes to farmland preservation. The state disburses the funds to those counties that have county programs approved by the State Agricultural Land Preservation Board. In 2003, there were 53 counties receiving allocated funds for easement purchases from the state cigarette tax revenues.

PART IV. EVALUATING AND LEVERAGING FUNDING SOURCES

Our hope is that this report provides a starting point for local governments trying to identify local revenue sources for farmland protection programs. A necessary first step in this process is to evaluate the potential funding source, and an important planning step throughout the process is to consider ways to stretch existing revenues. We offer a few thoughts on each of these topics below.

4.1 Assessing the Feasibility of Funding Sources

A careful assessment of a proposed funding mechanism can help ensure successful creation of a viable funding source. We've drawn upon resources provided by American Farmland Trust and the Michigan State University Land Policy Institute to offer the following questions that a local government can ask when analyzing a potential funding policy. These questions address important considerations such as equity, appropriateness and stability of a revenue source.

- How much money will the source generate? Will the revenue grow at a rate similar to the growth in value of remaining farmland?
- How difficult will it be to obtain voter approval for the revenue source?
- Does the mechanism maximize the ratio of "winners" to "losers"? Can it be spread over a broad base to minimize negative impacts per capita?
- How predictable and secure is the funding source?
- Does the funding technique have a strong connection to agriculture?

4.2 *Stretching Local Dollars*

In addition to raising revenue, a community can maximize its farmland protection funds in a number of ways. One way to stretch local dollars is to leverage other funds. In Ohio, several communities have already done this by participating in programs such as the Clean Ohio Agricultural Easement Purchase Program (AEPP), the Clean Ohio Green Space Conservation Fund and the Federal Farm and Ranchlands Protection Program (FRPP). These competitive programs allow a local government to obtain state and federal matching funds for the purchase of easements or land.

A second approach to stretching dollars is to utilize the Installment Purchase Agreement (IPA) with selling landowners. Both the local government and the landowner stand to benefit from allocations of purchase funds in installment payments. Because principle payments are deferred during this time, IPAs minimize cash needed to close on a purchase. The result is that actual dollars available for purchases are extended, therefore protecting more land than lump sum purchases from the same amount of original funding. The Internal Revenue Code (Section 453) allows capital gains from an installment sale under the installment payment method to be deferred until receipt of the purchase price, thus possibly allowing the seller to defer all capital gains for 30 years. For further information on IPAs and easements, see the fact sheet by American Farmland Trust at <http://www.farmlandinfo.org/documents/27752/tafs-ipa.pdf> or <http://www.agriculture.state.pa.us/agriculture/cwp/view.asp?a=3&q=128852>.

SOURCES OF ADDITIONAL INFORMATION:

American Farmland Trust (1999). *Purchase of Agricultural Conservation Easements: Sources of Funding*, AFT Farmland Information Center Fact Sheet. Available on the web at <http://www.farmland.org/resources/fic/default.asp>.

Michigan State University Land Policy Institute (2006), *Alternative Funding Sources for Farmland Preservation in Michigan*, MSU Land Policy Institute Report #2006-3. Available on the web at http://www.landpolicy.msu.edu/reports/Alternative_Funding_Sources_Final.pdf

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