

# Wisconsin Purchase of Agricultural Conservation Easement (PACE) Program

## Evaluation Report



June 2012



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## Overview

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers a program under s. 93.73, Stats., to purchase agricultural conservation easements from willing landowners (the PACE program). DATCP administers the PACE program in cooperation with local governments and qualified nonprofit conservation organizations (cooperating entities). Cooperating entities apply to DATCP for funding to help purchase a proposed easement. If DATCP approves of a project, the Department may pay up to 50% of the fair market value of the easement along with reasonable transaction costs related to the easement purchase.

PACE easements are designed to protect tracts of working agricultural land from non-agricultural development. A PACE easement does not mandate a specific land use, but instead prohibits development that would make the land unavailable or unsuitable for agricultural use. The landowner retains ownership and control of the land, subject to the development restrictions imposed by the easement. The recorded easement runs with the land and is binding on subsequent landowners. The agricultural use of the land is protected yet it remains in private ownership and on the local property tax rolls.

In some cases, this perpetual restriction may make it easier for farmers to transfer their operations to the next generation or to sell their land to other farmers. By limiting nonfarm development land values, purchases can be completed based on agricultural value, instead of competing with commercial or

residential values. Farmers may be able to purchase land at a lower cost that makes continued farming more feasible. In certain cases, the easement may make sale more difficult. Agricultural conservation easements typically limit land division allowed on an encumbered property. Currently, a PACE easement only allows land division, or separation for sale, if a landowner receives prior written approval from the easement holders (the state and the local cooperating entity). This is intended to ensure protected land remains at an acreage that will be agriculturally viable and also reduces the cost and complexity of perpetual monitoring and enforcement by the easement holders. The United States Department of Agriculture-Natural Resource Conservation Service's (USDA-NRCS) Farm and Ranch Lands Protection Program (FRPP) implements a similar restriction, only allowing land divisions if each remaining parcel is equal to or greater than the average farm size in the county.

The PACE program is only one of the tools available under the state's farmland preservation program for protecting and preserving farmland including a suite of land use tools; county farmland preservation planning, and farmland preservation tax credits available through farmland preservation zoning and farmland preservation agreements in Agricultural Enterprise Areas.



*Discussing the PACE program with landowners and partners*





*Protected farmland in Waupaca County*

As a particularly effective and relatively expensive tool, a PACE easement cannot and should not be used in isolation. Agricultural lands, and specifically prime agricultural soils, are finite natural resources. Their preservation requires the strategic utilization of all available land use tools. As such, the easement program is meant to be employed in conjunction with other local preservation efforts to help anchor and enhance specific areas of agricultural land. Indeed, an applicant cannot apply for PACE funding unless the land is located in an officially designated county farmland preservation area. In addition, the PACE ranking criteria awards points for those proposed projects that are located in Agricultural Enterprise Areas – areas that are locally identified as important for agricultural preservation.

While easement proceeds directly benefit landowners participating in the program, local communities and neighboring farms also benefit indirectly from protected farmland. Proceeds from an easement can act as a catalyst for local economic development, fostering the ability to add employment opportunities on the farm and consequently bringing added spending dollars into a community. Money received from an easement purchase is also reinvested into the local community through purchases of goods and services from local agricultural businesses. Neighboring farms also benefit

from the added certainty that an easement provides, knowing a neighbor's land will remain available for agricultural use in perpetuity. If a farm is to remain in agricultural use, neighboring farmers gain confidence that reinvestment in their agricultural operation will not be in vain. Non-agricultural development on one farm invariably threatens the continued viability of nearby farm operations in the community: neighboring incompatible uses often cause the elimination of farmland through a domino-effect of non-agricultural development.

There are additional benefits to protecting farmland through an easement program beyond injecting added capital into a local economy. Removing development potential from farmland generally reduces the future market value of the land, which can help facilitate farm transfers between generations and between agricultural operations. This can help ensure that a sufficient supply of land is available for farmers to purchase and farm. Easements also help to maintain the rural character and scenic qualities of a town, which helps sustain a chosen lifestyle and can attract tourists seeking a break from urban spaces. The added protection also provides many environmental benefits such as flood water retention and protection from non-agricultural water pollution.<sup>1</sup>

Prior to the passage of 2011 WI Act 32 (2011-2013 State Budget), the PACE program accepted two rounds of applications. In 2010, the PACE program received 36 applications from 13 cooperating entities covering 9,400 acres of farmland. In 2011, the PACE program received 40 applications from 15 cooperating entities covering over 11,000 acres of farmland. Under Act 32, the State funded only those projects preliminarily approved in the 2010 application year with funding from the Knowles-Nelson Stewardship Fund.

<sup>1</sup> These benefits and others can be found in the report "Community Benefits and Costs of Purchase of Agricultural Conservation Easements" prepared by American Farmland Trust. The executive summary of this report is attached as Appendix A.



*Protected farmland in Jefferson County*

This report is based on the experiences of the Department, cooperating entities, and landowners that participated in the 2010 PACE process as well as feedback from various stakeholders interested in the program. The report details the program process from application to closing and reimbursement.

Overall, participants in the program found the experience worthwhile and important. Though some modifications of the program might enhance the effectiveness of the easements at preserving farmland, most respondents pointed to the potential that the program could have to both protect farmland and create financial opportunities for farmers across the state. Participants acknowledged that the program could have a positive economic impact on the state by fostering the growth of farm businesses and by creating job opportunities. One landowner noted the program made it possible to hire an additional on-farm employee, which otherwise would have been extremely difficult to do.

To date, landowners have used PACE proceeds in a variety of ways that directly benefitted the farm operation or reduced financial burdens.

- Six landowners used easement proceeds to purchase additional farmland, either to expand their farm operation or to serve as a buffer separating the farm from future development.
- Some landowners were able to utilize the easement proceeds for a tax-deferred real estate exchange, also known as a 1031 like-kind exchange, which allows landowners to qualify for deferred capital gain treatment.
- Five landowners paid down debt.
- Two landowners gave a small percentage of the purchase price to the local non-profit responsible for handling the cost-shares of the easements.
- One landowner expanded the farm operation by installing an on-farm grain storage facility by constructing a new 28,000 bushel grain bin and hiring an additional employee.
- Some landowners that donated a portion of the easement value may also receive a federal income tax benefit for making a charitable contribution.

Because an easement can have such a pivotal impact on a local community, the PACE program should select participants that are committed to reinvesting in the local agricultural economy and maintaining functional agricultural operations as well as preserving the land itself for future farmers.



*Protected farmstead in Jefferson County*



## Application Process

To apply for participation in the program in 2010 and 2011, the cooperating entity (a local government or nonprofit organization) submitted an application on behalf of the landowner(s) that included the following statutory requirements:

- Identifying information for the cooperating entity, including information showing that the cooperating entity is qualified to co-hold, monitor, and enforce the easement.
- A description of the land that would be subject to the easement.
- The name and address of each owner of land that would be subject to the proposed easement.
- Evidence that the named owners are all willing to convey the easement.
- An indication of the cooperating entity's willingness to arrange the purchase of the easement under the terms of the program as well as a willingness to share in the purchase costs, subject to reimbursement of the department's agreed upon share of the costs.
- The purpose of and rationale for the proposed easement.

Generally, applicants found the application process necessary and thorough. Many agreed that a significant vetting process was critical in order to protect the public's investment and to ensure that appropriate projects were selected.

## Application Evaluation

As required by state law, DATCP staff consulted with a 17 member PACE Advisory Council regarding administration of the program and development of criteria for the program. PACE Advisory Council members are appointed by the DATCP Secretary for 1, 2, and 3 year terms and represent various stakeholder interests and regions of the state. Council members assist with program development, recommend guidance for funding distribution, and provide a liaison role between the Department, local government, land trusts, landowners and other partners.

State statutes also require that all land subject to a proposed easement be located in a farmland preservation area as designated by the farmland preservation plan for the county in which the land is located. Easement purchases also must serve a public purpose.



In order to determine whether an easement would meet this second requirement, the following factors were considered:

- The extent to which the proposed easement would conserve important or unique agricultural resources, such as prime soils and soil resources that are unique or of state-wide importance.
- The value of the proposed easement in preserving or enhancing agricultural production capacity in Wisconsin.
- The extent to which the proposed easement would be consistent with local land use plans and zoning ordinances, including certified farmland preservation plans and farmland preservation zoning ordinances.
- The extent to which the proposed easement would enhance a state-designated agricultural enterprise area.
- The availability, practicality, and effectiveness of other methods to preserve the land that would be subject to the easement.
- The likelihood that the land would be converted to nonagricultural use if not protected by the proposed easement.
- The proximity of the land that would be subject to the proposed easement to other land that is protected for agricultural or conservation use and the extent to which the proposed easement would enhance that protection.
- The importance of the proposed easement in protecting or enhancing the waters of the state or other public assets.
- The likely cost-effectiveness of the proposed easement in preserving land for agricultural use.

- The apparent willingness of each landowner to convey the proposed easement.

Eligibility criteria were established to identify projects that met minimum standards for the program. Ranking criteria were also developed to score and rank the applications that were deemed eligible for the program. The ranking criteria attempted to acknowledge certain characteristics of the property, including the development pressures on a piece of land, noting distances from other preserved lands, municipalities, sewer districts, and highway interchanges. The main goal of the ranking criteria was to identify those farms that would benefit from added protection yet would remain viable for agriculture in the future.

After 2010 applications were scored, ranked, and preliminarily approved, the Department, in conjunction with the PACE Advisory Council, revised the ranking criteria to evaluate and redistribute points in the ranking system for those applications received in 2011. Some concerns identified from the 2010 ranking process, such as the placement of easements, level of development pressure, and weight given to certain ranking categories, were addressed through the ranking criteria update for 2011 applications. However, because 2011 projects were not preliminarily approved or subsequently funded, the results of the updates to the criteria could not be seen through easement implementation. If the PACE program were to continue to accept applications, the ranking criteria, and potentially eligibility criteria, would be adjusted again to reflect current program goals and priorities.

Some stakeholders expressed concern that, while consistent with county farmland preservation plans, the protected properties could have been more strategically placed to avoid the appearance of a seeming “shotgun” or random approach. Strategic placement of the easements would increase the impact of the protection on surrounding farmland. Such strategic placement could be achieved by utilizing some degree of

subjectivity in evaluating the easement proposals. More importantly, however, identifying more appropriate locations for easements may hinge on placing an added emphasis on comprehensive, locally designated PACE areas. In addition to the county-designated farmland preservation plan area, local governments at either the town or county level should be required to identify target areas where easements would be the most appropriate. These target areas should correctly categorize the land base and soils that are important for agricultural production while referencing all relevant land use plans (beyond just the farmland preservation plan). In addition, a well-designed local program should acknowledge development pressures from surrounding municipalities by including boundary or development agreements with neighboring local governments. Giving priority to potential PACE properties located in such targeted areas would encourage local governments to evaluate which lands it wished to preserve and would foster community support by requiring landowner input and feedback.

Some well-designed local PACE programs already exist in Wisconsin. For example, Rock County, through an ad-hoc committee, developed the Rock County PACE program during 2009-2011. The development of this program resulted in the development of a local vision and the establishment of goals, eligibility and ranking criteria. The program developed a land evaluation and site assessment system as well as a program manual outlining program policies and procedures. These extensive planning and program development efforts involved public

input to reflect the expertise, perspective, and opinions of all affected parties. Because of these efforts, areas suitable for permanent easements are clearly identified and have been thoroughly vetted at the local level. Anecdotal evidence has suggested that many other such programs would develop around the state if some level of funding were available. For example, in Dane County, the Town of Montrose formed a PDR committee, notified landowners, and solicited applications in preparation for the newly formed state PACE program. The Town of Windsor also solicited applications in anticipation of state PACE funding, receiving 21 applications from landowners in the town. Other local programs in Jefferson County, Ozaukee County, and Calumet County are in various stages of development as well.

The ranking criteria could be amended to give greater consideration to those applications where the state's share of the purchase price is less than 50% or the purchase uses multiple funding sources, including local investment of dollars, private funds, and landowner donation. This would lessen the cost burden on the state as well as solidify local and landowner commitment to pursuing permanent protection of the land.

Discontinuing the reimbursement of transaction costs would also help alleviate some financial burden on the state. Local cooperating entities could require landowners to contribute to transaction costs, which may prevent the submission of applications on behalf of property owners who lack the intention of following through with a signed contract.

### **Application Evaluation Recommendations:**

- **DATCP should place a higher priority on PACE projects located in easement areas strategically targeted by local governments, in addition to identification in the county farmland preservation plan.**
- **DATCP should place a higher priority on PACE projects that require a state contribution of less than 50 percent of the easement purchase price.**
- **Discontinue reimbursement of transaction costs for easement purchase to cooperating entities.**



## Preliminary Approval

After DATCP has reviewed, ranked, and presented PACE applications to the PACE Advisory Council for recommendation, the Department selects projects and gives written preliminary approval to those applicants. Before the easement purchase can proceed, the cooperating entity must provide the following information to the Department:

- A copy of the proposed instrument for conveying the easement
- A professional appraisal of the proposed easement, other than an appraisal obtained by an owner of the land that would be subject to the proposed easement. If the fair market value of the proposed easement is estimated to be more than \$350,000, the Department must obtain its own independent appraisal. If an independent appraisal is required, department policy also requires that each appraisal is reviewed by a professional appraisal reviewer to determine the final fair market value of the easement.
- A statement of the purchase cost of the easement.
- An estimate of the transaction costs that the cooperating entity will incur in connection with the purchase of the proposed easement.
- The record of a complete search of title records that verifies ownership of the land that would be subject to the proposed easement. This title search identifies any potentially conflicting property interests, including any liens, mortgages, easements or reservations of mineral rights.
- Documentation showing to the satisfaction of the Department that any material title defects will be eliminated and any materially conflicting property interests will be eliminated or subordinated to the proposed easement.

This was by far the most time consuming phase of the PACE process. Requiring some of the

above information when the application is submitted could increase administrative efficiency. In particular, a title search should be required with the application. This would ensure that the Department and the cooperating entity would not spend time working on an easement project that ultimately would become ineligible due to a clouded title that could not be cleared. This would also give the cooperating entity and property owner additional time to resolve any problems with the property's title well before closing. A site visit to the property should also be conducted by DATCP staff promptly after preliminary approval to determine if any additional issues exist on the property that would jeopardize the conservation easement.

Other information that should be required at the time of application include a confirmed boundary of the easement, a legal description of the property to be encumbered, and the number of building rights that the landowner plans to retain. Occasionally landowners chose not to cover all of their land with the easement or chose to retain limited building rights for later development. These decisions were not revealed until after the application had been approved. Because the boundary and the number of available building rights affects the appraised value of the farmland, these after-the-fact decisions created delays in the appraisal process as the exact boundaries and acreage were established. Professional surveys need not be completed at the time of application; however, the cooperating entity should be required to indicate whether or not a survey will be necessary so that the Department can obtain the survey as soon as an application is preliminarily approved. If the exact location of the easement boundary as well as the number of encumbered acres were set at the time of application with no subsequent opportunity for alteration, the Department could provide appraisers with the necessary information up front, greatly speeding up the appraisal process.

The availability of document templates and requirements to cooperating entities will also increase efficiency of the process. Because the program is no longer new, many of these materials have been developed and applicants no longer need to wait to review drafts, as was the case with the 2010 projects. Future cooperating entities and potential participants can enter into the easement process with sufficient notice of program demands.

According to s. 93.73 (6d), Wis. Stats, the Department is required to obtain its own, independent appraisal if the fair market value of the proposed easement is estimated to be more than \$350,000. This requirement caused some delay during completion of easement projects.

Participants in the 2010 projects questioned the necessity of requiring two appraisals. Though it is important to assure the public that the value of an easement is legitimate, particularly when the amount is very high, the appraisals frequently resulted in significantly different amounts, inevitably impacting landowner expectations and raising questions about the accuracy of the appraisals. A simpler and perhaps more effective approach could be to require one appraisal and one review appraiser. Where the applicant is utilizing FRPP funds, DATCP should continue to accept FRPP's reviews rather than requiring a separate reviewer.

#### **Preliminary Approval Recommendations:**

- **Require a title search at time of application instead of after preliminary approval**
- **Require a confirmed boundary of easement, legal description of property, and number of retained building rights at time of application instead of after preliminary approval.**
- **Require a site visit by DATCP staff to the property promptly after preliminary approval.**
- **Require the cooperating entity indicate if a certified survey is needed at time of application instead of after preliminary approval.**
- **Evaluate the advantage of requiring only one appraisal and one review appraisal.**



*PACE farm in Iowa County*



*PACE farm in Dane County*

## Contract with Cooperating Entity

Once DATCP determines that the necessary documentation has been submitted, the Department may enter into a contract with the cooperating entity. This contract authorizes the cooperating entity to purchase the easement on behalf of DATCP and the cooperating entity as co-holders of the easement (subject to certain terms included in the contract). The document also commits DATCP to reimbursing the cooperating entity for the Department's share of the purchase cost after the easement is recorded and clouds on title have been removed. The cooperating entity must pay the full purchase cost and transaction costs related to the purchase of the proposed easement up front and the Department reimburses the cooperating entity according to the PACE program transaction costs policy.

Some participants felt that this contract should be signed at the time of the application. Parts of the contract were a surprise to some cooperating entities that felt the terms should have been apparent from the beginning of the easement process. There were also concerns about estimating transaction costs in the contract even though these costs could later change. One way to reconcile some of the complications in this step would be to alert the contracting entity to the requirements in the contract and either require the cooperating entity to sign a memorandum of understanding to acknowledge the terms of the contract when submitting an application.

### Contract with Cooperating Entity Recommendations:

- **Require a memorandum of understanding between DATCP and cooperating entity at time of application.**



*Protected farmstead in Columbia County*





*Discussing the PACE program with landowners and partners*



*Tour of protected PACE property in Columbia County*

## **Finalizing Easement Agreement**

When all parties have agreed on the easement terms and purchase price, the landowner signs a legal document that creates the permanent easement. DATCP and the cooperating entity are designated as easement co-holders and sign the document, effectively accepting the easement. The cooperating entity then records the easement with the register of deeds for the county in which the land is located.

## **Reimbursement**

After the cooperating entity has provided a copy of the recorded easement and submits proof that any material title defects and conflicting property interests have been eliminated or subordinated, the Department reimburses the cooperating entity for the agreed upon portion of the purchase and transaction costs. This part of the process created difficulties for some cooperating entities. It was financially burdensome for cooperating entities to cover DATCP's share of the purchase price and wait for reimbursement.

Some entities had to obtain a short term bridge loan to provide funds for the purchase price. For small non-profit organizations, obtaining a bridge loan for an easement can be difficult because of a lack of collateral. Another cooperating entity pointed out that incurring interest on a loan is counterproductive to any easement program.

To ease this burden, DATCP recommends using an escrow holder, similar to the process that Department of Natural Resources uses for administering grants under the Knowles-Nelson Stewardship program. DATCP would issue a check to an escrow holder who would ensure that the easement had been recorded (and other specified conditions were satisfied) before releasing the easement payment. This would also enable all of the funds to be available at closing, which could then be distributed to debtors, landowners, or any other parties with an interest in the proceeds.

## **Reimbursement Recommendations:**

- Allow escrow closings as an option for easement payment distribution

## Special Circumstances

### Working with NRCS/FRPP

The USDA-NRCS FRPP program provided matching funding for many of the 2010 PACE easements. Some cooperating entities felt that coordinating with both a state and federal program was difficult and repetitive. Involving additional parties in the easement process invariably makes things more complicated. To alleviate some of the complication, the cooperating entity must take the lead role in communicating with both NRCS and the landowner.

Altering the chronology of certain steps in the process would alleviate complications as well. NRCS requires appraisals at the time of application and mandates that the appraisal be less than a year old at closing. Because NRCS has a continuous application period for FRPP, an applicant can apply to PACE first before applying to NRCS. When the cooperating entity has an appraisal completed for PACE, the cooperating entity could then use that same appraisal in its FRPP application. DATCP would also have reviewed the proposed easement document, title issues, and legal description, which the cooperating entity could include in its FRPP application.

Since its inception, one of the implied goals of the PACE program was to leverage federal funds to preserve farmland. However, some respondents suggested that the state could develop a grant program similar to FRPP instead of maintaining the current program, arguing that such a program would decrease the state's

administrative costs and relieve the department of some responsibilities, including co-holding the easement intentions of the program, it would require additional study and investigation into the merits of the move.

Such a move would require a complete overhaul of the statutes and prevent the state from having any control over monitoring and enforcement of the easements. Because this suggestion differs so significantly from the current

### Review by Joint Finance Committee

If the Department's share of the purchase and transaction costs exceeds \$750,000, the Department must notify the Joint Committee on Finance in writing of the proposal. If the co-chairpersons of the committee do not notify the Department within 14 days after the date of the Department's notification that the committee has scheduled a meeting to review the proposal, the Department may enter into the contract. If the co-chairpersons schedule a meeting within those 14 days, the Department may only enter into the easement contract after receiving approval from the committee. A proposal is approved unless a majority of the committee members in attendance vote to modify or deny the proposal.

### NRCS-FRPP Coordination Recommendations:

- **Require cooperating entity to first apply to state PACE program and then to NRCS-FRPP (where applicable), using the same appraisal for both applications.**



# SOURCE OF FUNDING AND STATE FINANCIAL PARTICIPATION

Prior to 2011 Wisconsin Act 32, the state was authorized under s. 20.866(2)(wg), Wis. Stats., to issue up to \$12 million in general obligation bonds to fund the purchase of PACE easements. This was financed by an equivalent reduction in unused bonding authority for the Conservation Reserve Enhancement Program (CREP). Under the prior budget, CREP funds could have been enhanced by the conversion fee, an amount collected for rezoning land out of a certified farmland preservation district, (s. 91.49(1), 2009 Wis. Stats.). The rezoning conversion fee implemented as part of the previous budget was removed in 2011 Wisconsin Act 32. Some participants felt that this funding source was appropriate for PACE purchases, in effect channeling resources away from lands that had benefitted from and then been removed from the Farmland Preservation Program to farmland needing added protection. To fund the preliminarily approved projects from 2010, Wisconsin Act 32 provided a one-time appropriation in general obligation bond funds from the Wisconsin DNR's Knowles-Nelson Stewardship program.

Most participants and stakeholders felt that some state funding is necessary to help sustain the PACE program, especially while the program is in its infancy. State funding allowed some local governments to apply to PACE on behalf of landowners that were willing to donate 50 percent of the easement value and accept payment via state funding for the remaining 50 percent. Without state funding, the local government may not have been able to complete the easement purchases. Though able to appropriately identify lands eligible for protection, many local governments also lacked adequate seed money to initiate such a program on their own. Stakeholders did, however, express the need for local funding to demonstrate that a local PACE program would be capable of co-

holding an easement. Respondents agreed that any funding sources used should have a logical connection to the preservation of farmland.

## Payment Options

The combination of enabling local governments to collect money specifically for PACE purposes along with the local governments' added role in identifying appropriate locations for the placement of easements within their borders could serve to more strategically place the protections at a lower cost to the state. In addition, added local support could help ensure the longevity and agricultural benefits of land protection. The state could help encourage and support local initiatives by providing sample documents, model processes, and best practices.

To limit the cost impact of issuing one-time lump sum payments, the program could shift to other payment options such as annuities or installment purchase agreements. Installment purchase agreements spread out payments so that landowners receive an annuity over a term of years (typically 20 to 30). Landowners could sell or securitize the agreement at any point to realize the outstanding principal. Payments issued over time could decrease the amount that the state would pay out in one year and enable the state to use accumulated and future dedicated revenues to protect land while it is still available and relatively affordable. If this is considered, further investigation in the potential costs of issuing installment payments for easement purchases is needed.

The Department also received comments suggesting the program purchase temporary, or short term conservation easements in lieu of permanent conservation easements to reduce the cost of the program. Appendix D, provided by Dr. Bruce Jones of the University of Wisconsin-Madison, contains more information exploring this idea and others. The existing farmland preservation program, through Agricultural Enterprise Areas, does include an alternative for 15 year farmland preservation agreements that cost the state approximately \$75 per acre over the 15 year agreement period.



## **Maximizing Local and Federal dollars**

Many PACE program participants utilized the availability of federal dollars through FRPP. This funding source should be emphasized to future participants. Cooperation with NRCS-FRPP allows money to enter into Wisconsin and become available to Wisconsin taxpayers that would otherwise not be accessible. To fully utilize these funds, careful attention should be paid to streamlining the two programs. The State should work with NRCS to ensure that efforts are not duplicated and materials, such as appraisals, can be used in a timely fashion for both sets of application requirements.

The PACE program could also mirror certain methods employed by NRCS. For example, currently the Department does not specify how funding should be used to provide compensation for the easement value. FRPP requires that at least one-half of the appraised fair market value of the easement is obligated by the cooperating entity either through cash from a different funding source or through a combination of cash and the landowner's charitable donation. If the landowner donates

a portion of the easement value, the cooperating entity must obligate a minimum of 25% of the purchase price, in cash. FRPP then provides a maximum of 50% of the negotiated purchase price. The purchase price is consequently defined as the fair market value of the easement minus the landowner's contribution. As a result, if a landowner donates 50 percent of the easement value, FRPP will pay for up to 50 percent of the remaining easement value (25 percent). Such an approach could be taken with the PACE program. This would enable the Department to combine landowner donation, local funding, state funding, and federal funding to maximize the effect of PACE dollars.

To limit the amount spent on one project, the Department could institute a cap for the maximum amount that would be payable per acre. NRCS, for example, provides up to 50% of the fair market value of the easement, but caps its grant to \$4000 per acre. Regardless of the method, many respondents agreed that some level of review must be in place for very high per-acre easement values.

## **Report Appendices**

**Appendix A** includes the executive summary from the report "Community Benefits and Costs of Purchase of Agricultural Conservation Easements", prepared by American Farmland Trust for the United States Department of Agriculture Natural Resources Conservation Service in December 2005. The study compares the costs of purchasing easements on farms to the benefits those farms could provide to their communities.

**Appendix B** includes feedback and comments from select cooperating entities and landowners that applied to the PACE program in 2010, received preliminary approval, and completed all steps the easement purchase process.

**Appendix C** includes eligibility criteria for the PACE program developed by the Department and the PACE Advisory Council and the ranking criteria used to evaluate PACE applications received in 2010.

**Appendix D** includes three attachments prepared by Dr. Bruce Jones of the University of Wisconsin-Extension: "The Effects of Time on the Costs of Conservation Easements for Wisconsin Farmland", "Financing the PACE Program with Consol Bonds", and "Issues Related to the PACE Program". The attachments explore alternative financing arrangements and present considerations for future policy discussions. The questions and/or issues raised by Dr. Jones were developed independently of this report and thus may not be fully addressed in the report.

## Appendix A

# **Community Benefits and Costs of Purchase of Agricultural Conservation Easements**

Prepared by  
American Farmland Trust  
for United States Department of Agriculture  
Natural Resources Conservation Service

December 2005



**American Farmland Trust**



## ACKNOWLEDGMENTS

American Farmland Trust would like to thank the Berks County Agricultural Land Preservation Board and Massachusetts Department of Agricultural Resources for assistance in identifying and providing background information and data for the case studies in this report.

*American Farmland Trust* (AFT) is a national, nonprofit organization founded in 1980 to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. AFT provides technical assistance services to landowners and land trusts, USDA and other agricultural and conservation agencies, planners, planning offices and planning commissions, and others. The foundation of these services is the Farmland Information Center (FIC), a clearinghouse for information about farmland protection and stewardship supported by the USDA Natural Resources Conservation Service. The FIC includes an online collection of literature, laws, sample documents and statistics and a staffed answer service to answer questions by phone, fax and e-mail. Additional services include planning for agriculture—including fiscal and agricultural economic analysis; farmland protection policy analysis and program development; direct land protection and easement management; stakeholder input and task force facilitation; and education and outreach: seminars and workshops, publications and publicity materials, as well as professional development and training.



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## EXECUTIVE SUMMARY

The National Resources Conservation Service (NRCS) provided funding for American Farmland Trust (AFT) to estimate the benefits that a farm could provide a local community in the future when its development rights are purchased. AFT analyzed the financial impacts to communities and individuals that result from protected farmland. Through the use of existing sources of data to generate this information, potential benefits are quantified in a way that taxpayers can understand and appreciate.

AFT compared the costs of purchasing easements on two farms to the benefits those farms could provide to their communities to field test a methodology developed by J. Dixon Esseks, Richard C. Owens, Charles A. Francis and Dennis Schroeder in “Estimating the Benefits to Local Stakeholders from Agricultural Conservation Easements.” Their research identified local residents or stakeholders who are likely to benefit from purchase of agricultural conservation easements (PACE) including: 1) owners of the farm, 2) subsequent buyers, 3) owners of adjacent or neighboring properties, 4) local travelers enjoying the views of the protected parcel, 5) local residents who find recreational opportunities, 6) consumers who purchase agricultural products grown on that land, 7) owners and employees of local businesses providing goods and services to the farm, 8) users of downstream water who avoid flood damage or flood control costs, 9) users of downstream water who avoid the costs of sediment build-up or water pollution, and 10) local residents who value farmland preservation for protecting wildlife habitat, rural “history and heritage,” curbing urban sprawl or achieving other civic purposes.

AFT evaluated and tested methods to determine the value of protected farmland to each category of stakeholder. A goal of the research was to measure the extent to which the benefits of placing a conservation easement on farmland equal or come close to the easement cost. Therefore, we attempted to measure as many types of benefits as possible in dollars so that the estimated values of the different types could be aggregated or compared.

AFT found that the largest benefit value was from the farm’s economic contribution to the local community through purchases of local goods and services, employment and product sales. Essentially, PACE acts as an economic development mechanism. When compared to a \$44,000 easement purchase for the farm in Deerfield, Massachusetts, significant benefits included the following:

- Neighboring properties received \$10,790 in lease payments and contributed an additional \$1,045 in property taxes annually.



- Annual purchases of local goods and services amounted to \$327,496, while the total local economic impact of the farm operation was \$863,315.
- A one-time cost of \$2,139 in soil loss from erosion was prevented by not using the property for residential development.
- A net annual fiscal benefit of \$82 in property tax revenue was generated to pay for community services.

A PACE cost of \$393,330 for the farm in Berks County, Pennsylvania, compared to significant benefits which included:

- Local businesses received \$133,964 from selling goods and services to the farm.
- Recreation benefits valued at \$804 per year.
- Local consumers purchased \$2,107 in direct sales of farm products.
- The value of local residents desires to have the farmland as part of their community was \$49,466 per year for a five-year period.

## Appendix B



*Our mission is to  
preserve our rural heritage  
by protecting remaining  
farmland, water resources,  
natural areas and open spaces  
impacting Northwestern  
Waukesha County.*

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*Tall Pines Conservancy is a 501  
(c) (3) tax exempt organization*

April 11, 2012

Lisa J Schultz  
Purchase of Agricultural Conservation Easement  
Program Manager  
Bureau of Land and Water Resources  
Department of Agriculture, Trade and Consumer Protection

RE: Comments on the PACE program for the Zwieg Maples Acres Project

Dear Lisa:

I am happy to provide you with comments regarding the PACE program and our impressions as the cooperating entity. First of all, I found the application process very thorough and appropriately complex. Your office provided us with a lot of guidance and direction throughout that process and I found it to be extremely helpful. After being selected, there was a large gap in the process due to the funding question---this situation caused considerable delay and consternation for all parties involved, but was ultimately resolved.

As we began to get ready for closing, DATCP staff needed to work through a lot of the details but considering that the program was in its infancy, we felt that the process went rather smoothly and surprisingly quick. The closing process was rather lengthy however, in the end, we greatly appreciated everyone's hard work to meet a timeline to record the easement before the end of the year.

One issue became a rather large obstacle that needed to be creatively approached and that was the requirement that the Cooperating Entity cover DATCP's share at the closing and subsequently be reimbursed. As a very small land trust, this was a rather large issue to address. In the end, a solution was reached ---one that I think could be incorporated in the program should it go forward of using an escrow agent. Coming up with that large amount of funding is insurmountable by most non-profit land trusts, and creative solutions need to be accommodated.

Again, all in all, utilizing the PACE program for preservation of the Zwieg Farm was a learning experience for all involved, but was well worth the time and energy to save a 6<sup>th</sup> generation farm!

Sincerely,

Susan Buchanan  
Executive Director





Dear Lisa,

It is our pleasure to have the opportunity to express our opinion and experience with the PACE Program and the process involved in applying for it. Before too much detail is given we would like to state that we believe the Working Lands Initiative, and especially the PACE Program segment of it, provided vital support to the economic growth of the farm businesses affected by it. In our specific case the reinvestment of acquired funding provided enough growth to create two full-time jobs

that would have been immensely difficult to create otherwise.

With thoughtful changes in amounts and funding sources we believe PACE could become a cornerstone for economic development in Wisconsin Agriculture.

The application for funding from DATCP was put together well, and was necessarily thorough. Rankings by distance from other preserved lands, municipalities and sewer districts were all important information in creating project priorities. We believe having an intense vetting process is a good idea to insure all projects are positive and public dollars are not wasted. Given the current climate we also believe an elevated importance should be given to the economic, and employment impact a project will have within the application. It is our belief that from an overall view, the application process was well designed.

Given the fact that this was the first group of applicants we thought that the development and purchase of the easement went relatively smoothly. If it were not for essentially, a complete state government shutdown in the middle of the project we believe the timeline would have been appropriate. Challenges always arise in projects of this financial magnitude and DATCP appropriately addressed problems within their control. We feel flexibility must be maintained within the easement development process because all farm operations and farm properties are different and require different exceptions to maintain a successful business.



Acceptance and recording of the final easement was a paperwork intensive but straight forward process. For having to deal with 16 similar yet different closings DATCP and associated personnel handled issues well. We received responses and information promptly and never felt like we were unaware of what was going on. The only snag made aware to us was the process of fund dispersal which became quite complicated for the cooperating entity. A change to allow less financial burden at closing for the cooperating entity would significantly simplify the final process.

From application to closing being a participant of the initial round of PACE was a worthwhile learning experience. Preserving and strengthening agriculture in Wisconsin will prove to benefit the state in the long run and our family is honored to have had been a part of it. As a 6<sup>th</sup> generation dairy farm homesteaded in 1856 we believe that the purpose and affects of PACE could have an enormous impact on a large variety of agriculturally related businesses in the State of Wisconsin. Taking the opportunity to improve upon an existing, positive program will serve all of us well in the years to come.

Please feel free to contact us with any other questions.

## **Waupaca County Land & Water Conservation Department**

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### **Waupaca County PACE Summary**

The following represents Waupaca County's opinion on the various processes and rules encountered during application and execution of the Purchase Agricultural Conservation Easement process. We will discuss how the various topics affected us as well as how we think they may affect other Cooperating Entities in the future.

#### **Existing Program Thoughts and Recommendations**

##### **I. Program**

This is a very worthwhile program to facilitate preservation of prime farmland. In fact it is probably a much better option than Farmland Preservation (FPP) itself. FPP has become another government farm tax subsidy with no penalty for withdrawal. PACE is forever. It could be said that FPP is more of a conservation compliance tool however \$7.50/acre is not enough incentive to pay for \$200,000 manure runoff systems without additional BMP grant funding. So therefore why not put the farmland preservation money to a program with permanent protection (PACE) and leave conservation compliance grant needs to the programs that already fund it.

##### **II. Application**

The type and length of application seemed appropriate. The application should partly be used to determine the ability of the Cooperating Entity and it seemed as though that was achieved. We would recommend some type of appraisal prior to application to both gauge the seriousness and inform the potential seller (land owner) of the type of financial offer being tendered. Additionally this would reflect the consequence of any development rights being held back by the landowner. Also complete legal descriptions and title searches of the property applied for should be required up front so as not to waste time sorting this stuff out later or trying to overcome large obstacles. This would also help to identify parcels that need subordination or separate legal agreements.

##### **III. Application Evaluation Criteria**

We believe the current criteria were a good start that could use some tweaking to bring out some additional differences among the development pressure facing different properties. Among the Waupaca PACE properties we were very surprised that the ranking was not more consistent by location. Additionally we believe more emphasis should be put on the amount of agricultural future each property has. In other words it seems that preserving prime farmland is more appropriate in neighborhoods where agriculture is more likely to thrive long term. Also the long term goal of preserving large, contiguous, multi-landowner PACE areas (some AEA theory here) should probably see more weight in an evaluation process. This would be reflective of the future direction of agriculture.

LWCD's Mission: To Assist Landowner's in Making Sound Natural Resource Related Decisions



We do believe that the Cooperating Entity having easement experience and available resources was and should be an important evaluation criterion. This program is much more intense than many of the other state grant programs and should be treated that way if continued in the future.

- IV. Preliminary Approval  
There was an almost unbearably long time frame between Preliminary approval and Final purchase. If more work was done during and prior to Preliminary approval the time frame could be tightened up.
- V. Information Related to Proposed Easement  
This particular round of PACE was characterized by not having certain pieces of proposed information at the appropriate time to inform the landowner. It is understood that this was due to the growing pains of a first time program. Future variations of the program would be well served to have all parts of the program available up front (i.e. legal agreements).
- VI. Review by JFC  
This step ended up not being relevant to Waupaca. However it caused great concern to the landowners that this process (created by government) could be altered by a political body.
- VII. Contract with Cooperating Entity  
This should possibly be done at application time. Some of the items were a bit of a surprise and would be better known upfront to some Cooperating Entities (CE). One recommendation would be to use more of the CE's established methods such as the legal agreement. If the CE is charged with future enforcement what would be the harm in having Legal Easements tailored to that region if DATCP reviewed and approved them upfront. Waupaca actually originally envisioned two legal agreements or a combination of both easement holder's agreement.
- VIII. Purchase of Easement  
No specific comments. See all other comments.
- IX. Acceptance and Recording of Easement  
No real challenges on this topic.
- X. Payment  
While not an issue for Waupaca County due to the time of year, payment of easements could be an issue for smaller Cooperating Entities with large easement payments. Incurring interest on loans is counterproductive to any easement program. Why not implement a two party check system similar to that of the CREP program. This would alleviate the burden of payment in situations where the CE is just the financial administrator.

## **Recommendations for the Legislature**

- I. Administration of the Program



DATCP staff has done an outstanding job of administering this program (“building the ship”) considering the circumstances of its wavering future. While administration of the program has seemed like a long process at times, there was likely not much alternative for the first run of this type of program. To some degree the ship was being built during the maiden voyage. It is possible that DNR could have provided more guidance than was asked of them since they have quite a bit more experience with easement purchases. The danger of taking too much advice from another program is that it begins to look like that program and not the one DATCP envisioned during the Working Lands Initiative. An easy recommendation could be for DATCP to use DNR appraisers for any required second appraisal. Originally I would have said to use DNR for review appraisal but in hind sight a review appraiser from the private sector with no government connections probably puts the land owner (seller) more at ease that we are not operating a government conspiracy.

## II. Source of Funding

Funding of the program is a contentious issue. Pace is a premium, cutting edge program for preservation of Wisconsin’s prime farmland. We feel that the funding source was on the right track prior to Act 32. The conversion fee, essentially a penalty for withdrawal of other lands from Farmland Preservation, seemed like a very appropriate source of funds to permanently protect farmland in other locations. Likewise, Bonding sources of revenue, like those eventually used, seem just as inappropriate. Survival of this type of program will not likely occur through funding sources that the taxpayers of Wisconsin are paying interest on into the future. We recommend a non-Bonding type funding source for any future program.

## III. State Financial Participation

State (and/or Federal) funding is probably necessary to *initially* sustain a program like PACE in the places that it needs to occur within Wisconsin. It is unlikely that very many political subdivisions, like Waupaca County, will have the local level of funding available needed to seed a program of this type. Counties and Towns, with large populations and tax base, that do have large levels of funding may have already passed the critical point (growth wise) in Farmland Preservation to benefit from implementing a PACE type program. It is likely that the future goal in any PACE program should be to become self funding through development rights trading or some other mechanism. Additionally private cooperating entities, such as land trusts, may not have the large scale funding available to facilitate large contiguous areas of eased land.

## IV. Local Matching Funds Required

Local matching funds should not be required unless necessary to secure specifically targeted high value lands. We believe requiring local, matching funding is like overpaying for an easement. In other words if a landowner was willing to sell an easement for a predetermined price (see appraisal process above) during application, why should a cooperating entity be required to add additional funding to purchase the easement? That local money would be better spent on another non PACE funded easement instead of trying to make a local entity prove it has “skin in the game”. The end goal of an easement program designed to save prime farmland should be to preserve as much contiguous land as possible not to compensate one purchase as much as possible. On the original PACE application, an option was given to accept a purchase price less than 50%. Several of the Waupaca applicants would have

exercised that option if it would have been presented differently. One way that matching funds (or local matching intent) could be required is to have the Cooperating Entities cover the entire cost of the easement development fees instead of DATCP providing the 80% cost sharing. While a significant cost, it would not be prohibitive to a Cooperating Entity with a serious program.

- V. Options for Less Costly, More Efficient Replacement Program.
1. Find a non Bonding fund source that is palatable to taxpayers.
  2. Make adjustments to Application Evaluation. Use workgroup of CE's and DATCP staff to do this.
  3. Require appraisal, legal description and title search up front so a landowner knows what the financial offer is and DATCP knows the property status.
  4. Offer less money (or percent payment) where appropriate.
  5. Possibly build a rating system to determine the financial offer (#3 above)
  6. Eliminate the 2<sup>nd</sup> appraisal requirement and let an experienced review appraiser determine validity of the initial appraisal. This is what happened anyway, but at twice the cost to DATCP.

## PACE Report Outline

### **Existing Program and Recommendations**

#### I. Program

Coordination with NRCS/FRPP program is still cumbersome and duplicative (example: appraisal review process and title review process)

#### II. Application

The application was relatively easy to complete once the appropriate data sources were identified.

#### III. Application Evaluation Criteria.

Criteria were reasonable.

#### IV. Preliminary Approval.

No comments.

#### V. Information Related to the Proposed Easement

Some of the DATPC easement provisions were non-standard compared to other ag easements, such as the claw-back provision for transaction costs, not specifically identifying easement value or amount contributed by various funders (for purpose of determining proportionate share), etc.

#### VI. Review by Joint Committee on Finance.

No comments.

#### VII. Contract with Cooperative Entity.

Contract process is awkward since transaction costs must be identified in the contract but will later change; suggest using DNR model in which a max. amount of reimburseable transaction costs are identified up front. Also, suggest including generic monitoring requirements rather than specifying the form itself.

#### VIII. Purchase of Easement.

DATCP should strongly consider the model used by the DNR Stewardship Program which allows escrow (rather than reimbursement) closings. This would save the sponsor time and money which could be used to protect more farmland.

#### IX. Acceptance and Recording of the Easement.

No comments.

#### X. Payment.

See VIII above.

### **Report Recommendations for the Legislature**



I. Administration of the Program.

The program is understaffed and legal review did not seem to be receptive to cooperating entities concerns or suggestions.

II. Source of Funding.

The conversion fee was a logical source of funding for the PACE program.

III. State Financial Participation.

Keep same level or increase.

IV. Local Matching Funds Required.

V. Options for Less Costly and More Efficient Replacement Program.

- More to a granting rather than co-holding model like NRCS FRPP has done. This will reduce state administrative costs.
- Negotiate partnership with NRCS/FRPP program to streamline administration of the program by, for example, eliminating duplication of the appraisal review process and title review process.

\\Server\shared\docs\Stewardship\Grant & other Program Info\DATCP\PACE\Pace evaluation report April 2012.docx

Lisa, my comments about PACE don't take up a lot of paper!

1. The program as administered by DATCP has been extremely tedious and cumbersome. About the time I was led to believe that I had submitted necessary documents, another request was made--often (in my mind at least) ridiculous, i.e. the need to have some governmental authority send a missive stating that I am an unmarried person.

2. Wisconsin has apparently been locked into thinking that the state needs to co-hold the easement. At this point, at least, I do not believe that there is anyone at DATCP trained to monitor the easements, so the co-operating entity will be responsible for that. I think the co-operating entities probably have much more experience monitoring easements, anyway.

3. Given 2 above, I think it would make much more sense for the PACE program to become a grant program designed to match the Federal FRPP. This would save countless hours of staff time, would better direct the available funds toward actual farmland preservation, would cut mountains of unnecessary red tape, and would result in more farmland preserved at much less cost to the tax-payers.

4. Making matching funds available to co-operating entities--land trusts and local governments--and have them responsible for monitoring and enforcing easements would result in a much more efficient program.

These are my comments. They are intended to be constructive.

## Appendix C





State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) 2010 GRANT PROGRAM

### Eligibility Requirements

In order to be eligible for consideration for a grant under DATCP's PACE program, an application must meet all of the following:

1. The entire property must be located in a farmland preservation area designated in the county's certified farmland preservation plan.
2. A qualified farm conservation plan must be in effect for the property.*
3. At least 50% of the property must be cropland, pasture, or grassland.
4. The landowner must meet the Gross Farm Revenue requirements for Farmland Preservation Tax Credits. **
5. The application must be submitted by a qualified cooperating entity (a political subdivision or a qualified non-profit conservation organization).
6. All landowners must sign a statement indicating that they are willing to convey the proposed agricultural conservation easement.

**Please note** that other requirements will have to be met before an actual grant is awarded, such as evidence of compliance with Soil and Water Conservation Standards and proof that material title defects or conflicting property interests have been eliminated or subordinated.

\* A qualified farm conservation plan means a plan prepared by local, state or federal conservation agency staff for the purposes of compliance with state or federal Soil and Water Conservation Standards including ATCP 50.

\*\* In order to qualify for Farmland Preservation Tax Credits, the farm must produce at least \$6,000 in Gross Farm Revenues during the relevant tax year or \$18,000 during the last three years including the relevant tax year. "Gross Farm Revenues" means gross receipts, excluding rent, from the land's agricultural use, less the cost or other basis of livestock or other items purchased for resale that are sold or otherwise disposed of during the taxable year. If a landowner rents out farmland, "Gross Farm Revenues" may include farm revenues received by the renter but produced from the owner's farmland.

**Purchase of Agricultural Conservation Easements (PACE) Program**

**CRITERIA TO RANK PROPOSED EASEMENTS FOR PACE GRANTS**

**Point Summary:**

**Maximum points per section**

Sec. 1	Agricultural Capacity and Productivity	75
Sec. 2	Consistency with Planning and Zoning	40
Sec. 3	Development Pressure	35
Sec. 4	Ecological Services and other Public Benefits	20
Sec. 5	Community Support	15
Sec. 6	Proximity to other Protected Land	10
Sec. 7	Financial Considerations	10
Sec. 8	Capacity to Manage and Enforce Easements	5
Sec. 9	Qualitative Points	15

**TOTAL POSSIBLE POINTS** 225

**Section 1. AGRICULTURAL CAPACITY AND PRODUCTIVITY (75 Possible Points)**

**A. Percentage of prime, unique and statewide important soils on the parcel as classified by the NRCS County Soil Survey**

1	90% or more	40
2	70% to 89.9%	30
3	50% to 69.9%	20
4	30% to 49.9%	10
5	Less than 30%	0

**B. Percentage of cropland, pasture and grassland on the parcel**

1	90% or more	25
2	80 to 89.9%	20
3	70 to 79.9%	15
4	60 to 69.9%	10
5	50 to 59.9%	5
6	Less than 50%	0

**C. Parcel Size: Ratio of total acres of land in parcel to be protected to the average farm size in the county**

1	Ratios greater than 1.0	10
2	Ratios of 0.5 to 1.0	5
3	Ratios less than 0.5	0

*\* For parcels applying as specialty agriculture, this question will be substituted with question 9D.*

**Number of points from Section 1:**

**Section 2. CONSISTENCY WITH PLANNING AND ZONING (40 Possible Points)**

**The parcel is located within:**

A.	A certified Farmland Preservation Zoning District	15
B.	A county or town with a TDR or PACE ordinance or official PACE advisory committee	10
C.	An Agricultural Enterprise Area designated by DATCP	5
D.	A county or town where splits on farmland are limited by restrictive covenants	10

**Number of points from Section 2:**

**Section 3. DEVELOPMENT PRESSURE (35 Possible Points)**

**A. Percent of parcel's boundary which is in agricultural use or accessory use as defined in s. 91.01, Wis. Stats.**

1	90 to 100%	10
2	80 to 89.9%	8
3	70 to 79.9%	6
4	60 to 69.9%	4
5	50 to 59.9%	2
6	40 to 49.9%	1
7	Less than 40%	0

**B. Percent of municipal land area in developed use in most recent land inventory available based on town, county or regional planning commission data.**

*Developed land area includes all urban uses including roads, commercial, industrial, and residential.*

1	0 to 9.9%	2
2	10 to 19.9%	10
3	20 to 29.9%	8
4	30 to 39.9%	6
5	40 to 49.9%	4
6	Over 50%	2

**C. Change in population density by county between 2000 and 2007**

1	10 people or more added per square mile (Red on map)	5
2	4 to 10 people added per square mile (Orange on map)	4
3	2 to 4 people added per square mile (Yellow on map)	3
4	1 to 2 people added per square mile (Blue on map)	2
5	Less than 1 person added per square mile (Grey on map)	1

**D. Distance from sewer service area or incorporated municipal boundary**

*Points for section D are additive and will be capped at 5 points.*

**D1. When 2007 population estimate is less than or equal to 10,000 and the parcel is:**

1	Less than 1 mile	0
2	1.1 to 3 miles	2
3	3.1 to 6 miles	1
4	More than 6 miles	0

**D2. When 2007 population estimate is greater than 10,000 and the parcel is:**

1	Less than 3 miles	0
2	3.1 to 5 miles	2
3	5.1 to 8 miles	1
4	More than 8 miles	0

Number of points from Section D:	
----------------------------------	--



**E. Distance from the nearest highway interchange**

*A highway interchange is a grade-separated intersection with access ramps, usually linking at least one freeway to other intersecting roads.*

**The parcel is:**

1	Less than 0.5 miles	0
2	.6 to 3.0 miles	5
3	3.1 to 6.0 miles	4
4	6.1 to 10.0 miles	3
5	10.1 to 15 miles	2
6	Greater than 15 miles	0

Number of points from Section 3:

**Section 4. ECOLOGICAL SERVICES AND OTHER PUBLIC BENEFITS (20 Possible Points)**

**Environmental, Conservation, Historic, Archaeological and Scenic Values**

points awarded for each attribute:

A.	At least 30% of the parcel is within a Source Water Assessment Area (for municipal wells)	4
B.	At least 30% of the parcel is within a Surface Water Quality Management Area	4
C.	The parcel contains natural or restored wetlands (3 acres or greater)	4
D.	The parcel is identified for protection in a federal, state, regional or local conservation, recreation or open space plan	4
E.	The parcel provides habitat for threatened or endangered species (state or federal)	1
F.	The parcel has been designated or is adjacent to a state or local landmark, historic or archaeological site	1
G.	The parcel is located along a designated scenic riverway, by-way, or rustic road	1
H.	The parcel is a Century Farm	1

Number of points from Section 4:

**Section 5. COMMUNITY SUPPORT (15 Possible Points)**

points awarded for each attribute:

A.	Affected city or village has passed a resolution in support of easement purchase	4
B.	Affected town has passed a resolution in support of easement purchase	4
C.	Affected county has passed a resolution in support of easement purchase	4
D.	Affected town has entered into an intergovernmental boundary agreement with city or village	3

Number of points from Section 5:

**Section 6. PROXIMITY TO OTHER PERMANENTLY PROTECTED LAND (10 Possible Points)**

**A. Adjacency to permanently protected land**

*"Permanently protected land" includes farm and other lands protected by a permanent conservation easement, public land (parks, state wildlife area, etc) or land owned by a non-profit organization for conservation purposes*

**The parcel is immediately adjacent to:**

points awarded for attribute:

1	200 acres or more of permanently protected land	5
2	100 to 199.9 acres	4
3	50 to 99.9 acres	3
4	20 to 49.9 acres	2
5	5 to 19.9 acres	1
6	0 to 4.9 acres	0

**B. Proximity to permanently protected land**

*"Permanently protected land" is defined in 6A.*

**# of protected acres within one mile of the parcel:**

1	1000 acres or more	5
2	500 to 999.9 acres	4
3	250 to 499.9 acres	3
4	100 to 249.9 acres	2
5	25 to 99.9 acres	1
6	Less than 25 acres	0

Number of points from Section 6:

**Section 7. FINANCIAL CONSIDERATIONS (10 Possible Points)**

A.	Cooperating Entity is seeking less than 20% cost share from the state	10
B.	Cooperating Entity is seeking 20.1 to 35% cost share from the state	7
C.	Cooperating Entity is seeking more than 35% cost share from the state	0

Number of points from Section 7:

**Section 8. LOCAL CAPACITY TO MANAGE AND ENFORCE EASEMENTS (5 Possible Points)**

point awarded for attribute:

A.	Cooperating Entity has system in place and staff for monitoring and enforcing easements or applicant is partnering with an organization with expertise and capacity to monitor and enforce easements.*	5
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Number of points from Section 8:

\* Will be required at the time contract is signed between the Department and Cooperating Entity.

**Section 9. QUALITATIVE POINTS (15 Possible Points)**

A. Is infrastructure readily available to support continued agricultural use of the property? Describe services, facilities, programs and other resources that are available to support continued agricultural use of farmland in the area. *For example, feed suppliers, implement dealers, veterinarians, value-added processing facilities or markets are located nearby.* (5 possible points)

B. Are there factors that make this parcel more important from an economic development perspective than other properties? Will protection of the parcel have a direct, positive economic impact on the broader community? *For example, the farm supports or will create jobs, other farmers rely on the farm for contracts and agreements, the farm contributes to value-added production or is a destination for agri-tourism.* (5 possible points)

C. Have capital investments been made associated with the property or does the property contain improvements that make the parcel especially valuable from an agricultural perspective and contribute to the farm's long-term viability? *For example, the landowner has constructed irrigation wells, silos, a manure digester, an on-site cheese factory or other buildings or investments have been made in conservation practices such as contour buffer strips, terraces, and improved drainage.* (5 possible points)

D. *For specialty agriculture applicants only:* Is the parcel located in an area that supports or is uniquely suited to specialty agriculture of specialty crops? Describe the relationship and importance of the parcel to other specialty agriculture operations in the area. (10 possible points)

E. Please provide additional information to supplement or further explain responses to the questions asked in Sections 1 through 9 of the application.

Number of points from Section 9:

TOTAL NUMBER OF POINTS FROM SECTIONS 1 THROUGH 9:

## Appendix D



# The Effects of Time on the Costs of Conservation Easements For Wisconsin Farmland

Bruce L. Jones

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May 23, 2012

Under the Wisconsin PACE program (Purchase of Agricultural Conservation Easements), farmers receive a single monetary payment in return for agreeing to never develop their farmland. This voluntary program is relatively expensive primarily because it involves transactions with perpetual time horizons. The costs of the program could be reduced if the non-development agreements were negotiated for finite periods of time versus perpetuity.

Figure 1 shows how the value (cost) of a conservation easement varies depending on the length of time the easement will be in effect. For the case illustrated in the graph, \$1000 is paid for a perpetual easement. This \$1000 payment is equivalent in value to receiving \$30 per year for perpetuity if the rate of return to capital is 3%.

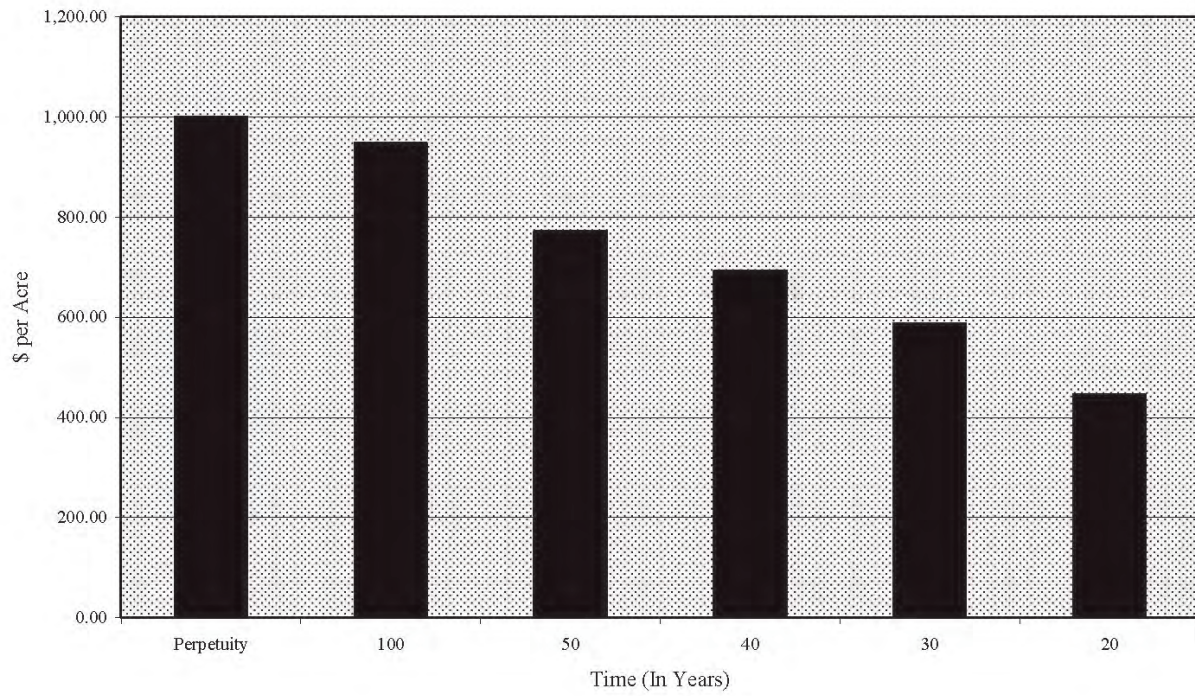
Rather than negotiating a perpetual easement, one could set up a conservation easement for 100 years where the land-owner again receives \$30 per year. The present value of this income stream for a 3% return to capital is almost \$950. So the cost of the conservation easement drops from \$1000 to about \$950 if the time period for the easement is limited to 100 years.

Additional cost savings can be gained if further restrictions are placed on the time the conservation easements will be in effect. As shown in Figure 1, the cost (value) of the easement falls to about \$450 per acre when the easement period is limited to 20 years.

The inverse relationship between time and the value of conservation easements is noteworthy because it means steps can be taken to reduce the costs of conservation easements. Unfortunately reductions in easement costs came at the expense of time. As such the effectiveness of the conservation easement program will likely be reduced as time periods are reduced.

Figure 1:

### Cost of Conservation Easement





# Financing the PACE Program With Consol Bonds

Bruce L. Jones

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May 25, 2012

Under the PACE program, land owners receive a lump sum payment for the development rights for their farmland. The state funds this program using the money it obtains from issuing 20 year bonds. These bonds require the state to make periodic (annual or semi-annual) interest payments and a final payment of the bond's face value (the money initially borrowed) when the bond matures.

Instead of paying land owners in cash, the state could give the owners bonds known as consols. These unique financial instruments pay periodic interest payments (coupons) like other bonds; but they do not mature. As such these bonds pay returns to perpetuity, just as farmland yields perpetual returns.

Intuitively it makes sense to finance the purchase of agricultural conservation easements with consols because it matches the life of the debt (the consol) with the life of the asset being purchased by the state (the conservation easement). This financing arrangement eliminates the cash flow problems that can arise when the repayment period for debt is considerably less than the life of the asset being financed.

Farmland owners may prefer to receive up front cash payments for conservation easements versus a series of fixed annual payments over time. These landowners need to understand that the consols they receive can be sold in the market place for a price equal to the present value of the coupons (interest payments) that will be paid out on the bond through perpetuity. This is noteworthy because it means landowners will still be able to get a lump sum payment for a conservation easement. But under the consol payment plan, the lump sum payment would come from investors instead of Wisconsin's treasury or bond fund.

The values of consols are inversely related to interest rates. Thus the values of consols rise when interest rates fall and they drop as interest rates increase. This relationship between the values of consols and interest rates is potentially an opportunity for the state to reduce the costs of the PACE program.

Interest rates are presently quite low. As such it is almost a certainty that interest rates will be increasing as the US economy strengthens. When this happens, the value of consols and other bonds issued by the state should fall. This drop in consol values would be an opportunity for the state to buy back the bonds that were initially issued in exchange for conservation easements on farmland. These re-purchases of consols at reduced prices would essentially lower the net costs of the conservation easements purchased by the state. So the cost of a conservation easement initially set at \$1,000 per acre could be reduced by \$100 if the state can repurchase the bond



financing the purchase of the conservation easement at a price of \$900. These opportunities could exist if interest rates rise as expected in the next few years.

Policymakers need to understand that Wisconsin's PACE program does not have to be financed with conventional 20 year bonds. An alternative financing arrangement would involve an exchange of consols for conservation easements for farmland. This innovative approach to financing PACE has merit because it lets the state purchase perpetual conservation easements with debt instruments that also have perpetual lives.

## Issues Related to the PACE Program

Bruce L. Jones

Director, Renk Agribusiness Institute, UW-Madison CALS

May 25, 2012

1. What benefits do the citizens throughout Wisconsin gain from the purchase of development rights for farmland in specific regions of the state? If state resources are being used to purchase conservation easements, shouldn't benefits from these transactions accrue to all citizens of the state?
2. What steps can be taken to ensure that the purchase of conservation easements do not distort regional farmland markets such that land prices (or rents) are elevated to levels that are higher than would be expected with no government intervention?
3. The PACE program allows some farmland owners gain access to equity that would otherwise only be available if the owners sold their farmland outright. Are the few farmers who are able to sell their development rights given advantages over other land owners when it comes to purchasing or renting additional farmland in the community?
4. What is the remedy for the situation where it is determined that it is more advantageous to the citizens of the community to develop land that has previously been placed into the PACE program?
5. Rather than purchasing development rights immediately, would it be more cost-effective for the State to first buy "call options" which give the State the right to purchase development rights in the future at a given price? The State could exercise its call option if the market value of the development right exceeds the strike price. Otherwise the state could let the call option expire and buy the development rights at the market-price. The cost of these development rights options should be considerably less than the actual development rights.
6. A possible incentive for selling the development rights for farmland is obtaining cash that retired farmers can use to cover their living costs. An alternative to selling development rights for retirement funds is a reverse mortgage program that would let retired farmers borrow against the development rights to their farms. Under this arrangement, the farmland owners or their heirs could repay the reverse mortgage by: 1) paying the principal and interest due on the loan; or 2) sign over the development rights for the farmland to the State. If the reverse mortgages are repaid, there is no cost to the state while the land is preserved as farmland.