Farmland Protection Program (Purchased Easements)

Summary: Under this federal program, qualified agencies purchase agricultural conservation easements from farmers who desire to permanently protect their land from development. Landowner participation in this program is entirely voluntary federal funding will account for 50% of the easement value. Only local/regional entities with established and funded farmland protection programs are eligible for this funding. However, since funding is often limited at the local level, only 25% of the easement purchase must come from the local entity if the landowner is willing to donate (in other words discount) the other 25%. The Farmland Protection Program (FPP) provides funds to eligible entities (state, tribal, or local governments and nonprofit organizations) to help purchase easements that would preclude development of productive farmland~~.~~

Qualifying Lands: Eligible land is land on a farm or ranch that is any of the following: cropland, rangeland, grassland, pasture land, forest land that is an incidental part of an agricultural operation; OR contains historical or archaeological resources. Properties that contain prime soils are given the highest priority for funding, and this means having the combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and that is available for these uses. Highest priority is given to projects which meet these requirements and are also at risk of non-agricultural development, or that further a state or local policy consistent with the purposes of the program.

Important Details: Farmers interested in enrolling their land in the federal FPP must apply to the agency running the local program within their county. The local program then rates applicants and sends the top-ranked applications to the state's Natural Resource Conservation Service (NRCS) office program administrator. Applications from throughout the state are then rated accorded to NRCS criteria, and the highest ranked are given priority for receiving the federal matching funds that have been allocated to each state. FPP participation requires the inclusion of a federal contingent right of enforcement or executory limitation in easements purchased with FRPP funds. Additionally, any highly erodible land that is protected with FRPP funds is subject to the requirements of a conservation plan through the Natural Resources Conservation Service. The intent of FPP funding is to help ensure viability of farming in the region, so agricultural production should be a major component of land use into the future. However, in the event that farming becomes impossible for the site in the future, land uses that conserve the natural resources of the property, and especially the soil are considered compatible.

Status in Lake County: Although farmland has been protected in Lake County by way of land purchases and conservation easements, no agencies as of yet have participated in the federal FPP. Currently Kane County is the only county in Illinois participating in the program.

Benefits to Landowners: The key benefit for landowners is that they can continue to own and operate their farm, and yet receive a significant influx of money due to the selling off of their land's development rights.

Tax incentives: Since the farmer is being paid for selling development rights, the income tax deductions associated with conservation easements don't apply unless a portion of the easement is donated to the easement holding agency. The major tax incentives for farmland protection lie in the area of estate taxes. Estate taxes are greatly reduced because of the property's loss of value. This becomes extremely important for families wanting to pass the whole farm down to the next generation but who would not normally be able to do so because the market value of the property would generate a huge tax burden that would necessitate the sale of all or part of the farm. Additionally, the farmer can avoid being taxed on the proceeds from this development rights sale by using the money to buy additional farmland. This is allowed under Internal Revenue Code Section 1031. It is therefore called a "1031 like-kind exchange." To be considered a like-kind, the additional purchased property must be alike in nature to the property from which the development rights were sold and be situated in the United States.

Scenario: A farm has a fair market value for development of $1million, but the family participates in the FPP, dropping the value to $200,000 because the land can no longer be developed. However, they have now received

$800,000 for selling off the property's development rights. Instead of getting the full tax burden of this sudden income, they decide to put $200,000 into an IRA, and they use the $600,000 remaining dollars to purchase additional farmland in their area. This allows them to expand operations, yet have shelters from a heavy tax burden.