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STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

June 2008

Item #8:	**Sale of Farmland Acquired Through the Washington Wildlife and Recreation Program (WWRP)**
Prepared By:	Jim Fox, Special Assistant to the Director
Presented By:	Jim Fox, Special Assistant to the Director
Approved by the Director:	

Proposed Action: Decision

Summary

The WWRP Farmland Preservation Program statutes allow grant recipients to buy farmland through a fee simple or less than fee acquisition. In fee simple acquisitions, the grant recipient must place an agricultural conservation easement on the property and attempt to resell the underlying land, subject to the easement. The recipient may use the proceeds from the sale of the property to purchase interests in additional property or to repay the grant. However, repaying the grant or leasing the land for farming if the property is not sold violates federal restrictions on the use of the tax-exempt bond funds that are the source of funds for WWRP.

Staff Recommendation

Staff recommends that when a grant recipient intends to purchase farmland in fee simple, the Recreation and Conservation Office (RCO) would reimburse the sponsor only on the appraised value of the easement and exclude the underlying land.

Resolution #2008-027 is offered for Board consideration.

Background

The WWRP Farmland Preservation Program (FPP) provides grants to cities and counties to purchase and preserve farmlands in order to maintain the opportunity for agricultural activity. In the first two grant cycles, all of the applications for FPP grants were for less-than-fee acquisitions — that is, acquisition of development rights through the purchase of an agricultural conservation easement. RCW 79A.15.130(2)(b), however, also allows fee simple acquisition:

> *"If a city or county acquires a property through this program in fee simple, the city or county shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city or county shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property."*

Funding for WWRP comes from the legislature's appropriation of tax-exempt bond revenues. Because the bonds are tax-exempt, a number of federal regulations govern how the funds may be used. Staff discussed the issue with the state Treasurer's office and the Treasurer's bond counsel, and found that:

- Allowing project sponsors to return money from the sale of a property purchased in fee simple changes the Farmland Preservation Program from a grant program into a loan program. This could potentially conflict with federal regulations that restrict the use of tax-exempt bond funds to benefit private business use. Bond council recommends against this option.
- If the grant sponsor is unable to sell the property and leases it for farming, this also potentially creates a situation in which the grant provides a benefit to private business use.

Analysis

If a grant recipient purchases farmland in fee simple, two options would be consistent with federal regulations:

1. The sponsor uses the proceeds from the sale of the property to purchase interests in additional farmland. The sponsor would not be able to lease the property for commercial activities before the sale.
2. Grant funds are used to reimburse the sponsor only for the appraised value of the easement, not including the underlying land. The sponsor then would be free

to lease the property or sell the property and keep the proceeds, without conflict with federal restrictions.

The Board could offer both options to grant recipients. However, staff recommends that the Board adopt only Option 2 until a longer-term solution can be implemented through Board policy or statutory change.

Next Steps

If the Board adopts Option 1, Option 2, or both, staff will amend Manual 10f, *Washington Wildlife and Recreation Program Farmland Preservation Program Policies and Project Selection* accordingly. If Option 1 is adopted, the manual will be amended as shown in Attachment A. Staff will work with the Washington Wildlife and Recreation Coalition and other stakeholders to explore possible legislative changes for the 2010 grant cycle.

Attachments

Resolution 2008-027

A. Manual 10f, Washington Wildlife and Recreation Program Farmland Preservation Program Policies and Project Selection (relevant portion)

Resolution 2008-027

Sale of Farmland Acquired Through the Washington Wildlife and Recreation Program

WHEREAS, RCW 79A.15.130 allows recipients of grants from the Farmland Preservation Account of the Washington Wildlife and Recreation Program to acquire farmland in either fee simple or less than fee; and

WHEREAS, if a grant recipient acquires land in fee simple, the grant recipient must place an agricultural conservation easement on the property and attempt to resell the underlying land, subject to the easement; and

WHEREAS, RCW 79A.15.130(2)(b) allows grant recipients to use moneys from the sale of the property to purchase interests in additional property or to repay the grant; and

WHEREAS, the source of funds in the Farmland Preservation Account is from the state sale of tax-exempt bonds; and

WHEREAS, federal regulations on the use of tax-exempt bond funds prohibit these funds from benefitting private business use; and

WHEREAS, there are situations in which repaying grant funds or the leasing of land acquired by the grant recipient in fee simple could violate these federal regulations; and

WHEREAS, adoption of this resolution furthers the Board's objective to ensure that funded projects and programs are managed in conformance with existing authorities by establishing practices and manual language that adhere to federal regulations;

NOW, THEREFORE BE IT RESOLVED, that when the recipient of a grant from the Farmland Preservation Account acquires land in fee simple, the grant from RCO will be only for the appraised value of the easement, not including the underlying land; and

BE IT FURTHER RESOLVED, that this policy shall take effect for the current 2008 grant cycle and RCO staff is directed t take the necessary steps for implementing this policy by amending Manual 10f, *Washington Wildlife and Recreation Program Farmland Preservation Program Policies and Project Selection* and notifying applicants accordingly.

Resolution moved by: ______________________________

Resolution seconded by: ______________________________

Adopted/Defeated/Deferred (underline one)

Date: ______________________________

Attachment A

Manual 10f, *Washington Wildlife and Recreation Program Farmland Preservation Program Policies and Project Selection* Page 9-10

Acquisition of land. The program allows for acquisition of fee simple title (meaning not just acquiring development rights, but acquiring the land as well). If this occurs, the sponsor must record a perpetual agricultural conservation easement on the property before seeking reimbursement from RCO, and then seek to sell the land. The enabling legislation for this program directs the sponsor to 1) place "a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity"; and then 2) "seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production." The legislation specifically requires that property rights be retained "in perpetuity"; thus, less-than-perpetual "term easements" may not be used when the sponsor acquires fee simple title

Additionally, because the enabling legislation requires the sponsor to place a conservation easement on the property before seeking to sell it, the conservation easement must be granted to "the State of Washington, by and through the Recreation and Conservation Office (RCO). The sponsor may not name itself as grantee to the easement.[1] If, and when, the underlying land is conveyed from the sponsor to another party, RCO will assume the role of third party to the easement and transfer its role as easement grantee to the sponsor.

~~The sponsor may seek reimbursement from RCO based either on the value of the easement, or on the value of the fee simple title, as follows:~~

~~1)~~ Sponsors will seek reimbursement from RCO based on the appraised value of the easement, not including the underlying land. ~~In this scenario, t~~The sponsor may sell the underlying land in the future pursuant to the terms of the easement. The sponsor has discretion on what to do with proceeds from the sale, because the reimbursement was not based on the value of the underlying land. While sponsors are encouraged to use these proceeds towards an endowment to manage the easement or to purchase other significant farmlands, they are not obligated to do so.

~~OR~~

~~2) Sponsors will seek reimbursement from RCO based on the appraised value of fee simple title. Because grants are used for acquisitions of underlying lands, sponsors must seek RCFB approval before selling the land. Sponsors must follow RCFB procedures for valuing converted land when they sell the property (see Manual 3,~~

[1] There are legal pitfalls associated with a single party's ownership of the fee title and a conservation easement over the same property. If ownership of easement and fee interests becomes vested in the same party, the easement may "merge" into the fee title, terminating the easement.

~~*Acquiring Land: Policies*). This means the sales price must be based on the appraised market value of the land at time of sale.~~

~~Additionally, and at the discretion of RCFB, proceeds from the sale will either be returned to the Farmland Preservation Account, or the sponsor will be allowed to acquire property interests on land that meets farmland preservation grant eligibility criteria. If land is acquired in fee using proceeds from the sale, the sponsor must record a second perpetual conservation easement and seek to resell this land as well. Proceeds from each additional purchase and sale of underlying rights will be guided by RCFB policy until the value of the original difference between the easement and fee title has been reinvested in the program.~~