



Farmland Preservation Program

Program Description and History

November 6, 2009 was the 30th anniversary of the Farmland Preservation Program (FPP). The FPP, which purchases and holds farmland development rights in perpetuity, is one of the oldest preservation programs in the United States. Since 1984, when the first development rights were purchased, the FPP has been a corner stone for agriculture in King County. The FPP ensures that, at a minimum, some of the county's remaining prime agricultural land will always stay undeveloped and open and available for agriculture.

Program Description

The Farmland Preservation Program (FPP) is a voluntary program that purchases the development rights from farmland in order to permanently preserve it for agriculture or open space uses. In selling their development rights, property owners grant the county the right to place covenants on their property that restrict its use and development. The covenants are contained in an agricultural conservation easement known as the Deed Of and Agreement Relating to Development Rights (Deed and Agreement). The Deed and Agreement is both an easement and a contract as it places restrictive covenants on the property and imposes contractual obligations on both the property owner and the county.

King County holds the development rights in trust on behalf of the citizens. The covenants that are placed on the property are in perpetuity; they “run with the land” and remain in effect even if the property is sold, rented, bequeathed or annexed by another jurisdiction. The covenants restrict the land to agricultural or open space uses, permanently limit the number of dwelling units, and require that 95 percent of the property remain open and available for cultivation. Although the covenants do not require that the property be actively farmed, they prohibit any activities that would permanently impair the use of the property for agriculture.

How the FPP Began

The FPP officially began in November 1979 when county voters passed a \$50 million Farmlands and Open Space Bond Initiative that authorized the sale of bonds to finance the purchase of development rights on high quality farmlands. Ordinance 4341 (codified as Chapter 26.04 of the King County Code) outlined the objectives and parameters of the FPP and instructed the Executive to put the bond initiative before the voters. The ordinance recognized the economic, aesthetic and unique benefits that agriculture provides to the citizens of King County and stated that land suitable for farming is an irreplaceable resource. The 1979 ordinance acknowledged that the current policies and regulations did not provide adequate protection and that the permanent acquisition of voluntarily offered interests in farm and open space lands would provide long-term protection of the public interests that these lands served.

Ordinance 4341 and the bond initiative obligated the county to hold the development rights in trust on behalf of the citizens of King County in perpetuity. They also required that, if the Council were to find that any of the lands or interests acquired with bond proceeds could no longer fulfill the public purposes described in the ordinance, the Council would submit to the voters a proposition to approve of the disposition of such lands or interests. Only upon a majority vote approving such proposition, could the county dispose of any land or interest. To date, no

lands or interests have been found unable to fulfill the public purposes that were described and the only loss of development rights has been through condemnation.

Purchase of Farmland Development Rights:

During the mid-1980s, the county accepted offers to purchase the development rights on 12,600 acres. Although most of the funds generated by the 1979 Farmlands and Open Space Bonds Initiative have now been spent, the county has continued to acquire farmland development rights using funds generated by the Conservation Futures levy as well as with federal and state funding. Since 1987, development rights have been purchased on 489 acres and the development rights on 52 acres have been donated to the county. An additional 121 acres have been acquired in fee. Adding these acres to those acquired during the mid-1980s brings the total acreage of permanently protected farmland in King County to 13,337 acres.

Managing the Farmland Preservation Program

In 2009 King County had 1.4 Full Time Employees dedicated to managing the county's farmland development rights interests. Management of these interests includes the following activities:

- Policy development and implementation. FPP staff develop and implement policies for managing the FPP. Written policies have been developed for determining the permissibility of various uses of FPP property, including the use of FPP property for utility easements and for rights-of-way. Policies have also been developed regarding habitat restoration and enhancement activities on FPP property. Implementation of various policies may require that they be approved by the King County Council. The restrictive covenants that are placed on properties to preserve them for agriculture have also been recently updated and revised to be more compatible with the needs of contemporary agriculture.
- Interpretation of the restrictive covenants. Although the covenants that are contained in the Deed and Agreement were written to be as specific as possible, questions occasionally arise concerning their interpretation. FPP staff periodically consult with the King County Prosecuting Attorney to ensure that the covenants are interpreted in a consistent and legally defensible manner.
- Property monitoring. FPP staff regularly monitor FPP properties to ensure that the owners are aware of the restrictive covenants and are complying with them. Monitoring activities include site visits and meeting with the property owner as well as routinely driving by properties.
- Application review. FPP staff review applications for building, grading, boundary line adjustments and other alterations of FPP properties to ensure that the proposed alteration is consistent with the covenants. Staff also review requests for easements across FPP properties. Council approval may be required depending on the extent of the requested activity.
- Record maintenance. FPP staff update and maintain other records pertinent to the county's development rights interests.

Trends and Challenges Affecting the FPP

FPP properties are generally reflective of other agricultural properties in the county. The changes and trends that are noted in this report also affect the county's preserved farmlands.

Increase in Number of Farms and Separate Ownerships

As the number of farms in the county has increased so has the number of farms that are in the FPP. The county originally purchased development rights on 187 separate ownerships during the

1980s. Since then, the county has acquired development rights on 17 additional farms. Besides purchasing more development rights, many of the farms that originally consisted of several parcels have been broken up and the parcels have been sold separately. As a result, by the end of 2008, FPP properties were under 260 separate ownerships. Approximately two-thirds of FPP properties have changed in ownership since the development rights were acquired. Besides selling parcels separately, the entire property may have been sold or passed on to heirs.

Changes in property ownership presents challenges for the FPP. In many instances FPP staff are working with owners who acquired the property after the development rights were sold. Not having received any compensation themselves, these owners are often unfamiliar with the FPP and the restrictions that have been placed on their property. Staff are frequently surprised by the lack of information that new owners have about the covenants and sometimes it appears that they have not even read them. Ensuring that property owners are familiar with the covenants and the restrictions that they impose is the most effective way of keeping FPP properties in compliance with the covenants. Monitoring staff make sure that new owners of FPP property have a copy of the covenants and they highlight those that are most likely to affect their use of the property.

Adjusting boundary lines between parcels or selling parcels separately may also create unintended consequences. FPP properties are subject to a 5 percent non-tillable surface allowance that is calculated as 5 percent of the total area of all of the parcels that comprise the property. If a property consists of several parcels, and if the amount of non-tillable surface on any one parcel is at or near the 5 percent limit for the entire property, then there will be little or no allowance remaining for use on the other parcels. FPP property owners may be unaware of the implications of this restriction if they are unfamiliar with the covenants.

From 2006–2008, 15 percent of the FPP properties that were visited had a least one covenant violation. The most frequent violations involved dwelling units—either the number of dwelling units exceeded the allowable limit or the occupants were not family members or associated with farming activities on the property. In addition to the covenant violations regarding dwelling units, monitoring staff also reported informally resolving other violations. Often, more than one site visit is required to ensure that a violation has been adequately resolved. During the three year period, more than one site visit was required for 30 percent of the properties.

Property monitoring is one of the FPP's most important activities. The enabling legislation for the FPP stated that King County would hold the development rights in trust on behalf of the citizens and monitoring is necessary in order to uphold this obligation. It is very strongly recommended that the county maintain sufficient staffing levels to allow periodic monitoring of the preserved properties.

Changes in Agricultural Use

Agriculture in King County has undergone significant changes since the FPP began in 1979. Socioeconomic factors, such as increased land prices and costs of living, challenges in finding and providing for required labor, potentially conflicting land use practices and increased demand for water and water rights, have potential adverse impacts on the long-term viability of farming in King County and the ability to keep FPP properties actively farmed.

Although these forces present challenges to preserving and promoting King County's farming tradition, other opportunities have emerged to promote local farming. The demand for market crops and value-added products has increased dramatically and new means have emerged to allow farmers direct access to consumers throughout the Puget Sound area. Additionally, recent changes to the King County Code have supported value-added processing and direct marketing of farm products.

The use of FPP properties reflects the changes in types of agriculture occurring in the county. King County originally purchased development rights on 62 dairies that, collectively,

encompassed approximately half of the 12,600 acres that were preserved during the 1980s. Although only 16 of the original dairies are still in operation, much of the acreage they utilized is still used for livestock or forage production. The diversity of livestock operations is increasing and a recent survey of lands within the APDs showed that 48 percent of FPP land is used for livestock or forage production.

The upsurge of interest in locally produced food and the response of farmers to this expanding market is also reflected on FPP properties. In the 1980s when most of the development rights were purchased, only a few farmers sold directly to consumers. Now, with 41 farmers markets in the county, there are many agricultural operations on FPP properties that sell their products directly to the consumer. In the early 1990s there was one FPP property that was a subscription farm in which the subscribers, consumers who buy the farm products, pay a fee at the start of each season that buys them a season's worth of product. Now there are three Community Supported Agriculture farms operating on FPP properties and each of these has several hundred subscribers.

Habitat Projects on FPP Property

In addition to their suitability for agricultural use, FPP properties often have high habitat value, both for aquatic and terrestrial species. In recent years, the FPP has had to respond to inquiries as to whether FPP properties can be used for habitat purposes. In responding to these inquiries, policies have been developed that are intended to maintain the county's obligation to preserve these lands for agriculture while utilizing, to the extent possible, their value as habitat sites. Although the bond initiative that enabled the FPP and the FPP covenants both recognize the open space values of the preserved lands, the intent of the FPP is to preserve land for agricultural use. Consequently, suitability for agricultural use must be maintained and any use of preserved farmlands for habitat or open space purposes must not permanently impair the land's ability to support agriculture.

Updating King County's Original Agricultural Conservation Easement

The Agriculture Commission has been working with county staff to assess and respond to the challenges, changes and opportunities facing farmers. However, farmers whose properties are subject to the FPP's original Deed and Agreement have not been able to take full advantage of some of the changes and opportunities. The commission felt that the Deed and Agreement needed to be updated and revised in order to better promote and protect economically viable agriculture.

In 2005, the original Deed of and Agreement Relating to Development Rights was modified to include requirements imposed by the use of federal funding to purchase farmland development rights. This funding, available through the Farm and Ranch Lands Protection Program administered by the Natural Resources Conservation Service, has become an important source of funding for the FPP. In 2006, the State of Washington initiated a Farmland Preservation Program that made state funding available for purchasing farmland development rights.

The State Farmland Preservation Program also requires that certain restrictions and contractual obligations be included in the easement that is placed on properties on which the development rights have been acquired. In light of this, and because King County's Deed of and Agreement Relating to Development Rights had not been significantly altered or updated since it was drafted in the early 1980s, FPP staff felt that it was a good time to update the Deed and Agreement and make it more compatible with current agricultural practices and concerns. Staff enlisted the assistance of the King County Agriculture Commission in reworking and updating the covenants.

The Agriculture Commission's Regulatory and Land Use Committee met for approximately two years to discuss and update the FPP covenants. The majority of the committee's work focused on the following questions and topics:

1. How should agriculture be defined?

2. Should the covenants require that the protected property be actively farmed?
3. How to keep preserved properties affordable by farmers.
4. Should the covenants address water rights?
5. Should there be a limit on the size of dwelling units?
6. Should the covenants allow the processing and marketing of products that are not grown on-site?
7. Criteria for allowing home industries and home occupations
8. Should the covenants allow the consumption of food items?
9. Non-tillable surface restrictions
10. Conversion of farmable areas to habitat uses

Two of these topics were of particular concern to both the committee and the full commission: requiring that the protected property be actively farmed and keeping the protected property affordable for farming. The following paragraphs summarize the discussions of these topics and the Agriculture Commission's recommendations concerning them.

Should the FPP Covenants Require that the Protected Property be Actively Farmed?

Both the Regulatory and Land Use Committee and the Agriculture Commission felt strongly that preserved properties should remain in active agricultural use. However, there were also strong differences of opinion as to how this goal could be achieved. Ordinance 4341, which enabled the FPP, used the definitions in RCW 84.34 to define farmland and open space land. The Committee discussed whether the easement should describe the protected property as specifically meeting the criteria for classification as "Farm and Agricultural Land" as set forth in Section 84.34.020(2) or if the description should also include the criteria stated in Section 84.34.020(8). Using only the criteria specified in Section 84.34.020(2) would require that preserved farmlands be actively farmed. Section 84.34.020(8) expands the criteria to include lands that used to be actively farmed, but which are now classified as "Open Space Land." It also includes other traditional farmlands that are not currently farmed, but which have a high potential for returning to commercial agriculture.

It was argued that since the intent of the FPP is to preserve properties as farmland, the easement should only reference Section 84.34.020(2) and the covenants should only allow agricultural uses. The point was made that since the original easement allows both agricultural and open space uses, FPP lands are being used for palatial home sites without using, or intending to use, the land for commercial agriculture. These home sites are located in the Agricultural Production Districts (APDs) and some committee members felt that this use violates the intent of the Growth Management Act (GMA) designation of agricultural lands of long term commercial significance and is contrary to the GMA's goal to maintain and enhance the agricultural industry. The concern was also expressed that using preserved properties primarily as home sites damages the critical mass of commercial agriculture within the APDs and leads to a loss of infrastructure that is critical to the agricultural economy. One committee member also felt that allowing FPP lands to be used primarily as home sites could be interpreted as a misuse of funds dedicated to the protection and enhancement of agriculture. Requiring that preserved properties remain actively farmed would also help to ensure that the features which make them suitable for agriculture, such as drainage, and water availability, are maintained.

The argument to allow other open space uses in addition to agriculture focused on the ability of the county to enforce the covenants. It was argued that, due to circumstances beyond their control, a property owner may not be able to farm themselves or even to lease the property for farming. In instances such as this, requiring that the protected property be actively farmed may be very difficult or even impossible to enforce. The additional point was made that the primary objective of the FPP is to preserve high quality agricultural soils and, although it is desirable to have preserved properties actively farmed, protecting the soil resource should be the requirement rather than active farming.

Instead of stating that the property must be actively farmed, the committee recommended that the new covenants state that “The Grantee strongly encourages the Grantor to farm the protected property or the lease the protected property for farming” so that the Grantor would be aware of what the county wanted. In order to address the very real concern that unfarmed properties may lose their ability to support agriculture, the committee also recommended that the covenants require that the property be managed under a Farm Management Plan by which the property is maintained in a condition capable of supporting current or future commercially viable agriculture. The Agriculture Commission supported the committee recommendations.

Keeping FPP Property Affordable for Farming

One of the main factors affecting property value is the value of the improvements and the committee discussed limiting improvement value as a means of keeping cost of property down. As was previously noted, several committee members expressed concern that very large houses were beginning to appear in the APDs. They felt that these large residences were inconsistent with the rural character of APDs and were concerned that the value of these improvements is so high that the property on which they are located is no longer affordable to a farmer. The suggestion was made that, as a means of keeping preserved properties affordable, the covenants should restrict dwelling units to a size that is consistent with other dwelling units in the APD. It was suggested that a reasonable restriction would be a size limit of 150 percent of the median size of dwelling units in all of the APDs. Based on the Assessor’s data, the median size (total living space square footage) of dwelling units in all of the APDs is currently 1,970 square feet; 150 percent of this area is 2,955 square feet.

In addition to keeping preserved farmlands affordable, committee members who supported this suggestion argued that including this restriction would allow the property owner to receive additional compensation for their development rights. They also argued that limiting the size of dwelling units may help to ensure that sufficient non-tillable surface allowance (the covenants restrict non-tillable surfaces to 5 percent of the property area) would be available for agricultural buildings and surfaces.

The committee also discussed the drawbacks of limiting dwelling size to keep properties affordable. Putting an additional restriction on the property would increase the cost to the county of purchasing development rights. Limiting the size of residences in order to keep properties affordable for farming assumes that only farmers purchase affordable properties. It also assumes that farmers do not want or need large houses. The opinion was also expressed that it can be beneficial to allow a variety of house sizes and lifestyles as this can result in greater diversity of farmers and farming operations. Additionally, limiting the size of residences on preserved farmlands could be the first step towards limiting the size of residences on all properties within the APDs.

In light of these arguments, the Agriculture Commission recommended that limiting house size should not be required, but instead, be included as an option. The commission also recommended that, on properties which are currently undeveloped, the Grantor be given the option of reserving the right to have no dwelling units. This would allow a Grantor who did not need a residence to receive additional compensation for his development rights and, because the property could not be used for residential purposes, would help to keep the property value down.

The Regulatory and Land Use Committee kept the Agriculture Commission informed of their proceedings. Recommendations developed by the committee were passed on to the full commission for review. At the Sept. 11, 2008, meeting the Agriculture Commission approved a motion recommending the adoption of the new agricultural conservation easement.

The new FPP easement, now called the King County Agricultural Conservation Easement: Deed and Agreement Relating to Development Rights, was approved for use by the King County Council on October 5, 2009 (Ordinance 16676). It includes the recommendations of the

Agriculture Commission and meets the requirement that are imposed by the use funds generated by the 1979 Farmlands and Open Space Bond Initiative, as well as funding from the federal Farm and Ranch Lands Preservation Program and the State Farmland Preservation Program. The new easement will be used for new development rights acquisitions and as an amendment to the existing easement (Deed and Agreement) on properties currently enrolled in the FPP if all parties agree to the amendment.

History of the Farmland Preservation Program

I. The Bond Initiative

The FPP originated in 1974 when a study on regional agriculture by the Puget Sound Council of Governments documented that urbanization of prime farmland was approaching 3,000 acres per year in King County. Although the county encompasses over 1.4 million acres, only about 100,000 acres have the soil characteristics necessary to be considered prime farmland.

Between 1945 and 1974 the acreage of land in farms decreased to less than 58,000 acres and the number of farms in the county declined from almost 6,500 to less than 1,400. The study also found that agriculture was often considered to be an “interim” land use that could be displaced as soon as other uses became available.

King County has long recognized the importance of agriculture as part of the county’s economic and social community. The King County Comprehensive Plan, adopted in 1964, identified certain land areas for continuation in agriculture and stated as a goal the “protection of certain agricultural, flood-plain, forest and mineral resource areas from urban type development.” In 1972 this goal was reinforced with adoption of Ordinance No. 1096 which established a policy that “Class II and III soils having agricultural potential and other classified or unclassified land presently being farmed shall be reserved for current and anticipated needs.”

The Puget Sound Council of Governments report that defined and evaluated agriculture in the Central Puget Sound Region was released in the summer of 1974. The report concluded that maintaining agriculture in an urbanizing area would require both the preservation of prime agricultural land and the promotion of the agricultural use of that land. The adoption of Ordinance No. 1839 implemented the concept of withholding agricultural lands from development to protect their agricultural capability. Unfortunately, this ordinance did not provide sufficient protection and the erosion of the county’s agricultural land base continued. Finally, in December 1975, the County Council adopted a one-year moratorium on further development of farm land until the problem could be studied and a more comprehensive action program initiated.

Ordinance 3064, which was passed by the King County Council in January, 1977, designated eight Agricultural Production Districts and established policies to ensure that as development occurred, the agricultural potential of the districts would not be adversely affected. The ordinance also designated Agricultural Lands of County Significance and included zoning policies to ensure that parcels within this designation remained large enough to support commercial agriculture.

In addition to designating agricultural areas, Ordinance 3064 directed the Executive to conduct an analysis of agricultural lands programs and to develop implementation proposals for such programs. A report issued in October, 1977 by the County’s Office of Agriculture analyzed factors affecting agricultural economic activity. The report concluded that a combination of land and support programs was necessary to provide a comprehensive approach that would adequately protect and encourage agriculture in the county.

In September, 1978 the County Council passed two ordinances addressing the acquisition of farmland development rights. Ordinance 3871 authorized submitting a \$35 million bond initiative to the voters for the purpose of providing funds for the acquisition of interests in farm

and open space land. Ordinance 3872 authorized the use of the bond proceeds to purchase development rights on 10,000 acres as a means of preserving farm and open space lands.

This bond initiative was placed on the November 1978 ballot and the election recorded 177,984 “yes” votes to 119,912 “no” votes. However, this was 754 votes short of the 60 percent majority necessary for approval of the initiative.

After the election, the County Executive and the Chair of the King County Council convened a citizens’ study committee to review the 1978 ballot measure and develop a recommendation on the best way to preserve farm and open space lands. In May 1979 the citizens’ study committee recommended that a \$50 million bond initiative be presented to the voters in the next primary election. Passage of this initiative would enable the purchase of development rights on 13,500 acres of agricultural land in the Snoqualmie, Sammamish and Green River valleys, on the Enumclaw Plateau, and on Vashon Island.

In June, 1979, the County Council approved Ordinance 4341 which called for an election to authorize issuing bonds, the proceeds of which would be used to acquire development rights on suitable farmlands. Ordinance 4341 also outlined the criteria for evaluating lands for development rights acquisition and established a citizen selection committee to advise the Council on suitable properties.

The County Council decided to put the new bond initiative before the voters in the September, 1979 primary election. The ballot received the required 60 percent “yes” vote, but the number of votes cast fell short of the number necessary (40 percent of the number voting in the last general election) to validate the bond initiative.

The Farmlands and Open Space Bond Initiative was put back on the ballot for the November 6, 1979 general election. The third time was a charm, as 63.6 percent of the voters approved the initiative and the voter turnout was sufficient to validate the election.

II. Implementation of the Farmland Preservation Program

Implementation of the FPP and the purchase of farmland development rights was delayed by a 1980 State Supreme Court ruling that said the bonds King County issued were limited by the 8 percent interest rate on 30-year municipal bonds that was in effect at the time of the 1979 election. Since the interest rate for AA municipal bonds was close to 12 percent in the early 1980s, the county could not sell any 30-year bonds at the original rate of 8 percent. The bonds that the voters approved in 1979 were to be available for only six years and there was concern that the bond rate may not drop back to 8 percent within this timeframe. In 1982, with just 3½ years remaining before the authority to sell bonds expired, the County Executive appointed a citizens’ task force to examine financial alternatives and present recommendations on the best means of implementing the FPP.

The citizens’ task force made several recommendations, one of which was to authorize the immediate issuance of at least \$10 million in Councilmanic bonds. This recommendation was adopted and although it resulted in a second lawsuit, the county was able to sell \$15 million in Councilmanic bonds. In 1984, funds generated by these bonds were used to purchase development rights on 2,100 acres of farmland in the Sammamish and Green River valleys and on Vashon Island.

The State Supreme Court made another ruling in 1985, allowing the county to use short-term bonds and to average interest rates to meet the 8 percent limitation. This ruling allowed the county to issue bonds for the remaining \$35 million so that the FPP was fully funded. Funds from these bonds were used to purchase development rights on farmlands in the Snoqualmie

Valley and on the Enumclaw Plateau. The county continued to purchase development rights for the next two years and by 1987, 187 properties totaling 12,658 acres were enrolled in the FPP.

The FPP was audited in 1988 by the County's Office of Internal Audit. The audit recommended that a monitoring program was necessary to ensure the effective preservation of program properties and to ensure the viability of local agriculture. The audit also recommended that preserved properties be identified to staff who review permit and subdivision applications, that information on the condition of the preserved properties be completed, that identified covenant violations be resolved, and the implementation of formalized investment policies and procedures to maximize financial resources for future programs.

Due to a lack of funding for staff for staff time, only the recommendation regarding investment policies and procedures was implemented at the time. The FPP was audited a second time in 1991 and the Auditor again recommended that a formal monitoring program be initiated. The audit also recommended that organization responsibility be fixed for commenting on land use proposals and the Comprehensive Plan, as to their impact on agricultural activities in the county. The audit also recommended that the county consider the feasibility of including certain elements of agricultural marketing and economic support with the agriculture program of the county. The implementation of the last two recommendations is discussed in other sections of this report.

The 1991 audit resulted in the creation of a "Property Rights Specialist" position having the duties of property monitoring, updating and maintaining records, resolving covenant violations and ensuring that permitting staff had access to information regarding the preserved properties. Funding for this position was included in the county's 1992 budget and a Property Rights Specialist began working in July, 1992. Since then the scope of the position has changed to include the other activities described in the "Program Description" section of this report. In recent years, a part-time position has been added to assist with monitoring and record-keeping. It is strongly recommended that this additional staffing be continued as these activities are crucial to the continued success of the FPP.



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