

## **BURLINGTON COUNTY FARMLAND PRESERVATION PROGRAM**

### **USE OF INSTALLMENT PURCHASE AGREEMENTS AS PAYMENT FOR THE PURCHASE OF PRESERVATION EASEMENTS:**

#### **QUESTIONS AND ANSWERS**

Burlington County's policy provides for payment of part or the entire purchase price of farmland preservation easements through an installment purchase agreement (IPA). This document is intended to give potential sellers a basic understanding of the IPA.

#### **Q. WHAT IS AN INSTALLMENT PURCHASE AGREEMENT?**

**A.** An IPA is a contract between the County and the property owner in which the County promises to pay the purchase price (or portion thereof) for a farmland easement on a future date. The IPA provides for the payment of interest semi-annually between the time that the easement is given to the County and the date that the purchase price is paid to the owner, which is no later than November 15, 2036.

#### **Q. HOW DOES THE SALE OF MY EASEMENT CHANGE WITH AN IPA?**

**A.** As in a cash transaction, once the County and the owner are ready to conclude the sale, the owner signs and gives a deed of easement to the County. By this deed, the owner agrees to use or maintain the property for agricultural purposes. If the County has agreed to pay a portion of the purchase price at closing, a check is given to the owner or applied to claims against the property, such as mortgages. The balance of the purchase price, along with interest on the principal, is paid to the owner through the IPA issued at closing. The IPA provides for the payment of interest on a semi-annual basis (two times per year) until the date specified in the IPA for the payment of the balance of the purchase price. The interest and principal are paid by a "paying agent" – ordinarily a bank – on behalf of the County.

#### **Q. WHY IS THE COUNTY USING IPAs FOR EASEMENT PURCHASES?**

**A.** The County Freeholder Board believes that the development pressure that the County experienced in the last 20 years continues. It fears that unless it acts quickly to conserve a significant amount of the remaining farmland in the County, this land and the rural character of the County will be lost forever. Deferral of the County's payment of the purchase price is expected to enable the County to make many more purchases than it could otherwise and at a faster rate.

#### **Q. HOW CAN STRUCTURING PAYMENT THROUGH AN IPA BENEFIT ME?**

**A.** One benefit to you from the County's use of IPAs is that the interest paid to you over the life of the IPA is not, under current law, subject to federal or New Jersey state income taxation. The pre-tax nature of the IPA investment and the tax-free nature of the interest payments could ultimately yield a higher after-tax return to the seller than an investment with a higher interest rate without these tax advantages.

If the sale qualifies for installment sale tax treatment, the interest payments you receive are based on pre-tax principal dollars. Section 453 of the Internal Revenue Code provides that capital gain from an installment sale may, under the installment method, be deferred until receipt of the purchase price. If you are interested in investigating installment reporting of gain from your sale of the easement, you should consult with an attorney and an accountant who are experienced with installment real estate sales transactions and knowledgeable about the specific federal laws and regulations that apply to this payment method for the sale of your easement. Since individual circumstances vary, the County is not in a position to guarantee that the IRS would approve this method of reporting gain from sale of any particular seller's easement.

**Q. WHY IS PAYMENT BEING DEFERRED AS LATE AS 2036?**

A. The year 2036 is the last year of a special County tax that went into effect in 1997 and 1999, authorizing the County Freeholders to annually levy four cents per \$100 assessed equalized value. Money generated by these taxes is being used to purchase easements for farmland, historic, and open space preservation. By deferring the payment of principal, the County can maximize its leveraging of anticipated tax revenues.

**Q. WHAT IS THE INTEREST RATE THAT I WILL EARN UNDER THE IPA?**

A. The County's current policy sets the interest rate under the IPA at 5% annually to be paid by the County. Once set at closing, this rate becomes fixed for the duration of the IPA. This practice is subject to periodic Freeholder review as conditions warrant. A County offer to purchase a development easement will describe the policy in effect at that time.

**Q. IF PAYMENT FOR MY EASEMENT IS DEFERRED, DOES THIS MEAN THAT THE EASEMENT WILL NOT BE EFFECTIVE UNTIL 2036?**

A. No. The easement and restrictions on use of your property will go into effect immediately. Instead of being paid cash for your easement, however, you are essentially being paid with the County's promise to pay you in or prior to the year 2036, along with the County's promise to pay you interest between closing and that time. The County will have the same right to enforce the restrictions on the property's use as it would if it paid the full amount of the purchase price at the time the deed is signed.

**Q. WHAT HAPPENS IF I SELL THE PROPERTY BEFORE 2036?**

A. The IPA has no effect on ownership of your property. You are free to sell your property at any time, subject to the terms and conditions of the deed of easement. If you sell the property, you will continue to receive interest payments due under the IPA as well as the principal payment when due.

**Q. CAN I SELL OR TRANSFER THE IPA?**

- A. The agreement prohibits sale or transfer of the IPA for one year. After that time, you are allowed to sell it or give it away, but such a sale or gift may have tax ramifications. Any transfer or sale of the IPA must be of the whole document and all of your rights in it. The County will not divide either interest or principal payments among multiple recipients. One person only is entitled to payments from the County.

If you sell or otherwise transfer the IPA, you must follow the procedures set out in the IPA for notifying the County and the paying agent so that they know who is entitled to receive payments. You can continue to own the property even if someone else is entitled to payments under the IPA.

**Q. IF MY PROPERTY INCREASES IN VALUE BETWEEN THE TIME THAT I SIGN THE EASEMENT AND THE YEAR 2036, WILL THE COUNTY PAY ME MORE FOR MY EASEMENT?**

- A. No. The purchase price of your easement is established at the time that you sign an agreement to sell it to the County. Once you do so and you sign the deed of easement, no additional compensation will be paid by the County (other than the interest payments specified in the IPA).

**Q. WHAT HAPPENS IF I AM WILLING TO SELL BUT ONLY WANT TO SELL FOR A CASH PAYMENT?**

- A. The Freeholder Board adopted revised Farmland and Open Space Preservation Programs Financial Policies on October 13, 2004 and April 25, 2007 to account for recent policy changes. Landowners are eligible to receive any combination of cash and/or IPA that they request, as long as a seller's IPAs total \$100,000 or more. Please see the County's Financial Policies document for additional information.

**Q. WILL STRUCTURING PAYMENT OF THE PURCHASE PRICE THROUGH THE IPA COST ME MONEY?**

- A. Yes. There are two costs to the seller associated with making the sale this way. First are the elective costs of hiring experts to assist you in making the sale and assessing how this method of payment affects your financial circumstances. The County strongly urges you to consult with an accountant or other expert financial advisor as well as a tax attorney to help you understand how this transaction will affect your taxes and your particular financial condition.

Because this type of transaction necessitates the purchase of securities by the County, the County incurs costs that it does not incur in cash purchases. Since all other costs of your sale (e.g., appraisal and survey) are borne by the County, the Freeholder Board has decided that a portion of the additional costs related to the IPA should be borne by the seller. The seller is responsible for a payment structuring fee equal to two percent of the face value of the IPA. This amount can be deducted either from the payment to be made at closing or from the principal amount of the IPA. Alternatively, this payment can be made in cash by the seller at closing. If a seller

request multiple IPAs, they will be charged \$3,000 for each additional IPA in the excess of two in addition to the 2% fee.

**Q. CAN I USE THE COUNTY'S ADVISORS TO ASSIST ME IN SELLING MY EASEMENT TO THE COUNTY WITH AN IPA?**

A. No. In its development of this program the County has been and will continue to use the services of its own attorneys and a financial advisor, Evergreen Capital Advisors. Although they may be available to discuss the transaction with you or your advisors, the County's advisors are prohibited from counseling or representing the interests of landowners to whom the County is making offers.

**Q. HOW DO I KNOW THAT THE COUNTY WILL HAVE ENOUGH MONEY TO PAY ME IN THE YEAR 2036, AND WHAT HAPPENS IF THE COUNTY (OR ITS PAYING AGENT) FAILS TO MAKE AN INTEREST PAYMENT TO ME?**

A. The IPA is a contract between the seller and the County similar in nature to a County bond. The County would quickly lose all credibility in making farmland easement purchases if it failed to comply with its bargain with landowners. It has been the County's practice to purchase securities just prior to closing that have a value at maturity equal to the amount of the payment that will be due. These securities, however, are not pledged to the seller or to the IPA. Regardless of the method selected by the County to provide for payment of the IPA principal or interest, the County is responsible for honoring its obligations and taking the steps necessary to do so. As in its sale of bonds, the County's promise to pay in the IPA rests upon a pledge of its full faith and credit, as well as its power to tax.

**Q. HOW CAN I FIND OUT MORE ABOUT IPAs?**

A. You may contact a member of the County's Farmland Preservation Program staff in the Department of Resource Conservation at (856) 642-3850 or your attorney may call Jeffrey Rabin, the County's Farmland Preservation Program attorney, at (609) 265-5289.