

## **MONMOUTH COUNTY FARMLAND PRESERVATION PROGRAM**

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

#### **QUESTIONS AND ANSWERS**

Monmouth County policy provides for payment of part or all of the purchase price of select 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 (date determined by landowner/County).

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

**A.** The County's contract of sale provides for a minimum rate of interest to be paid by the County. The specified minimum rate of interest (a "floor" rate) means exactly that—the County pays interest at a rate not lower than that stipulated rate. If interest rates rise between the time that the contract is signed and the time that the sale closes, the County will pay the higher prevailing market rate. 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 THE FULL BALANCE IS RECEIVED?**

**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 at a future date, 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 THE FULL PURCHASE PRICE IS RECEIVED?**

**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 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 THE BALANCE IS PAID, 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. 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 THE BALANCE IS DUE, 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 that have a value at maturity equal to the amount of the payment that will be due. 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 at 732.431.7460.