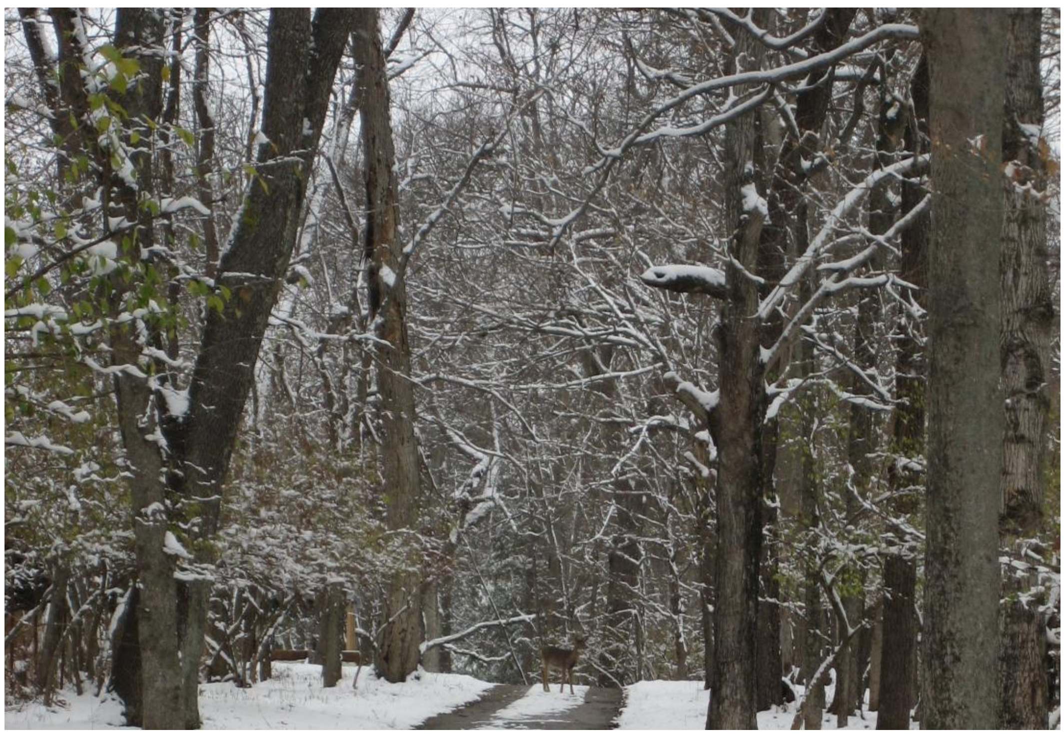
Conservation Finance Feasibility Study: May 2011

Commonwealth of Kentucky



THE TRUST for PUBLIC LAND

CONSERVING LAND FOR PEOPLE

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INTRODUCTION

The Trust for Public Land ("TPL") is a national nonprofit land conservation organization working to protect land for human enjoyment and well-being. TPL helps conserve land for parks, greenways, recreation areas, watersheds and wilderness. To date, TPL has helped protect more than 4,300 properties, totaling over 2.8 million acres in 46 states and, in Kentucky; TPL has helped protect over 4,000 acres with a fair market value of almost $18 million.

To help public agencies or land trusts acquire land, TPL assists communities in identifying and securing public financing. TPL's conservation finance program offers technical assistance to elected officials, public agencies and community groups to design, pass and implement public funding measures that reflect popular priorities. Since 1996, TPL has helped state and local governments generate almost $33 billion.

Between 2004 and 2010 TPL was involved with successful statewide measures in California, Iowa, Maine, Minnesota, New Jersey, Ohio, Oregon, Pennsylvania, and Rhode Island. These measures generated approximately $11.1 billion in new conservation funding with the majority of funding coming from Minnesota ($5.5 billion), California ($2.3 billion) and Oregon (1.7 billion).

The Trust for Public Land has undertaken the following feasibility analysis in order to determine the Commonwealth of Kentucky's land conservation funding options for preserving its working lands and natural areas, and developing and sustaining parks and open space for current and future residents, as well as visitors. Given the substantial investment of time and resources required for a successful conservation finance measure, preliminary research is essential to determine the feasibility of such an effort.

Kentucky's Land Stewardship and Conservation Task Force, 2007 House Concurrent Resolution 120 report focused on both stewardship and land acquisition mechanisms, outlining the importance of creating legislation to better address land stewardship and land acquisition in Kentucky. The report specifically identified an increase of the state sales tax of one-eighth of 1 percent to fund such efforts. This feasibility analysis should be viewed in conjunction with the task force report. It differs in that it focuses only on the exploration of funding mechanisms that will generate substantial funding to acquire land, one such mechanism is an increase to the state sales tax.

The study presents several other viable public options for funding land conservation in Kentucky and provides an analysis of which options and funding levels are economically prudent and likely to be publicly acceptable. This research provides a stand-alone, fact-based reference document that can be used to evaluate financing mechanisms from an objective vantage point. Before making any clear recommendations, The Trust for Public Land advises that the conservation community conduct a public opinion survey to gauge voter support for various funding mechanisms and their priorities for program spending. The information provided within will aid in developing survey questions.

EXECUTIVE SUMMARY

The foundation of an effective statewide land conservation program is strong fiscal commitment on the part of state government through a stable revenue source. Substantial state investment fosters program development and long-term vision. Some existing state programs rely on a single revenue stream, while others use a combination of dedicated revenue sources. While the Kentucky Heritage Land Conservation Fund (KHLCF) and Purchase of Agricultural Conservation Easement program have achieved substantial success in the last decade, Kentucky ranks below the national average for state investment in land conservation.

The Trust for Public Land's conservation finance feasibility study presents a general survey of programs and public funding options that are currently being utilized and/or may be used by the state for the purposes of acquiring land by easement or fee title for conservation. **TPL's research focuses on broad-based tax and bond mechanisms capable of generating significant funding at the state and local level that are practical and have been proven effective.** The contents of this report are based on the best available information at the time of research and drafting (April 2011), with much of the data compiled from Internet resources and direct communication with appropriate government agencies. This report does not directly address funding for related and important areas such as restoration, species management, and stewardship, nor does the report compile an index of lands and waters that may need protection.

Creating Long-Term Reliable Public Land Conservation Funding in Kentucky

The Trust for Public Land's research suggests that funding options for the Kentucky State Legislature to consider that have the greatest potential to increase state conservation funding include issuing a general obligation bond through voter approval, or dedicating an increase of the sales tax (or dedicating a portion of existing sales tax or sporting goods sales tax) for land conservation through the Kentucky Heritage Land Conservation Fund. The Kentucky Land Stewardship and Conservation Task Force recommended increasing the state sales tax by one-eighth of 1 percent.

The following are descriptive figures for these funding mechanisms in order to illustrate the amount of funding that can be generated at a specific tax increase or debt load. Any tax or debt load should be defined in consultation with public survey results.

The Commonwealth has the ability to place a $30 million bond issue on the ballot and if approved would pay an annual debt service of about $3.9 million annually for 10 years. An increase of 0.125 percent above Kentucky's current 6 percent state sales tax (or a dedication of an existing 0.125 percent) would raise about $58.2 million annually (based on FY10 projections).[1] Over five years, at 0.125 it would raise $291 million and over a decade, 582 million. For fiscal year 2011, there is hope that a slight increase in revenue may occur and current estimates have revenue nearing $3 billion.[2] **However, based on the current fiscal situation, any increase in the sales tax may be**

[1] http://revenue.ky.gov/NR/rdonlyres/22D4F100-E6DD-43BB-A5E5-64C34813A237/0/AnnualReport20080922510.pdf. This is probably conservative since the Budget Director's April 11 memo states that sales tax revenues grew 5.3% in first 9 months of FY11. At this rate it would be about $61 million per year.

[2] The Fiscal Survey of States, Fall 2010, A Report by the National Governors Association and The National Association of State Budget Officers. Page 42

challenging. In addition, incentive programs, such as tax credits for conservation, could be implemented to encourage private land conservation.

Other funding opportunities with the potential to generate smaller amounts of revenue include dedication of oil and gas unmined mineral taxes (unmined mineral taxes on coal already go to the KHLCF) or an increase in document recording fees.

Sporting Good Sales Tax: Based on figures obtained from the U.S. Fish and Wildlife Service, the sales of sporting good equipment in Kentucky total approximately $456 million per year. Applying the 6 percent state sales tax rate would yield over $27 million in state taxes. This revenue source could also be used to pay debt service on revenue bonds. The sale of equipment for horseback riding is not included in the calculations for sporting good equipment in Kentucky. Revenue associated with these sales is likely not insignificant.[3]

Unmined Mineral Tax: Currently, only the revenue from coal is directed towards land conservation. The Legislature could direct the other two major unmined mineral taxes, oil and natural gas, towards KHLCF and other conservation purposes providing an additional $4 million in land conservation revenue.

Document Recording Fees - In 2010, about 870,000 documents were charged a recording fee in Kentucky. For each, the county clerk sent $6 of that fee to the Affordable Housing Trust Fund, which received about $5.22 million from this funding stream.[4] Based on estimates for 2011, if an additional $3 recording fee for conservation was instituted the state could potentially receive around $2.5 million annually.

When evaluating the range of funding options available for public land conservation in Kentucky, it is helpful to keep several factors in mind. These funding favorability factors include:

- **Nexus between funding source and land conservation**. Is there a natural linkage between the funding source and land conservation? While not essential, this is often important to making the case for use of these funds for land conservation efforts.

- **Revenue raising capacity**: Will the revenue source raise enough money to accomplish reasonable conservation objectives? It requires a significant effort to establish a new funding source and it should generate adequate funding to warrant such an effort.

- **Reliability**: Will the source provide reliable funding or will it suffer fluctuations due to the economy? Will it be subject to diversions to other emerging priorities?

- **Competition**: Are there other state agencies or programs competing for the same funding source?

[3] Revenue associated with the sale of horse related equipment could not be obtained as the Department of Revenue, Sales Tax Division does not code sales in a way that would easily reflect this activity.
[4] Personal communication with the Affordable Housing Trust Fund staff and local counties

- **Precedent**: Has another state used the intended funding option for land conservation? Has Kentucky used the funding option for other services and programs? Breaking new ground can be challenging but is possible even if there is no precedent.

- **Political feasibility:** Is there a political champion who will lead the effort to establish a funding source? In many states where there have been successful efforts to establish dedicated funding for land conservation, this leadership has come from the governor or legislature. Another aspect to political feasibility is the presence of likely opposition. Certain funding options, such as the real estate transfer tax, have a built-in, organized opposition.

- **Potential partners:** Can supporters of land conservation align themselves with other groups to mutually establish a new funding source? Alliances with non-traditional partners can be particularly effective, such as when environmentalists and developers join forces to support funding for land conservation.

- **Public Support:** If the funding source will require voter approval through a ballot measure, will voters be likely to support increased taxes or spending for these purposes?

The Trust for Public Land recommends a public opinion survey be conducted to gauge voter support for various funding mechanisms and their priorities for program spending.

FISCAL STATUS/DEBT [5]

Kentucky's budget consists of the following governmental funds: the General Fund, the Transportation Fund, the Federal Fund, the Agency Revenue Fund, the Capital Projects Fund, and the non-major funds (comprised of 5 lesser funds). Budgets are prepared principally on a cash basis and all of the major governmental funds are budgeted except for the Capital Projects Fund. Non-major funds are not budgeted.

Budget officials announced on July 21, 2010, that, at the close of FY2010, the state's general fund had a surplus of $29.7 million. The surplus was realized after lawmakers revised the budget and lowered revenue expectations by more than a billion dollars for the fiscal year. The surplus funds are already spoken for, because the current state budget allows the surplus to be put in the state's Rainy Day Fund or spent on certain likely costs that are not funded in the budget. In FY2010, the state paid $39 million in such unfunded costs, including to the Kentucky National Guard and other disaster-response agencies. Given that seven counties experienced flooding early in FY2011, the state budget director believed it was probable that all of the surplus will be needed for the same costs in FY2011.

General fund receipts rose 7.1 percent in December 2010 compared to the previous year and 5 percent in the first five months of FY2011, which some took as a sign that the state's economy is slowly making a comeback. The state budget office estimated that state revenues will reach $8.63 billion in FY2011, which is nearly $58 million more than budgeted revenues. [6] [7]

Kentucky personal income increased by $5.5 billion or 4.0 percent over the first quarter of FY10. Kentucky personal income outperformed US personal income during the first quarter of FY11 and also managed to weather the recession with smaller losses. From peak to trough, the US lost a net 3.0 percent in personal income, while Kentucky lost only 1.5 percent net.[8]

Debt financing of the Commonwealth is classified as either appropriation supported debt (revenue bonds) or non-appropriation supported debt (GO Bonds). Appropriation supported debt carries the name of the Commonwealth and is either a general obligation of the state or a lease revenue obligation of an issuing agency created by the Kentucky General Assembly to finance various projects subject to state appropriation for all or a portion of the debt service on the bonds. Non-appropriation or moral obligation debt carries the name of the Commonwealth for the benefit and convenience of other entities within the state. This type of indebtedness is a special obligation of the issuer, secured and payable solely from the sources pledged for the payment thereof and does not constitute a debt, liability, obligation, or pledge of the faith and credit of the Commonwealth.

General Obligation Bonds are issued through the State Property and Buildings Commission, subject to general referendum approval required by the Kentucky Constitution. General obligation bonds pledge the full faith, credit, and taxing power of the Commonwealth and denote application of

[5] Excerpted from http://sunshinereview.org/index.php/Kentucky_state_budget and 2010 CAFR
[6] http://www.bloomberg.com/news/2010-12-10/kentucky-s-revenue-on-target-for-fiscal-year.html
[7] http://www.kentucky.com/2011/01/11/1593884/kentucky-receipts-jump-71-percent.html#more
[8] Kentucky 2010 CAFR

specific or general tax revenues to provide payment of principal and interest requirements on the debt. No general obligation bonds have been issued in Kentucky since 1965. Currently, the state has no new general obligation bond debt authorized or outstanding as of June 30, 2010.

Revenue Bonds - General authorization for the use of revenue bonds is contained in Chapter 58 of the Kentucky Revised Statutes. Specific authority is contained in the legislation and related KRS chapters creating and empowering the various debt issuing entities. Reference to such legislation and laws is made throughout the following entity descriptions. Effective July 15, 1980, KRS 56.870 requires prior approval of debt financing projects by the Kentucky General Assembly sitting in regular or special sessions. Succeeding statutes establish the methods for this approval and the exemptions from it. The majority of new debt issues are approved through the appropriation act. Per KRS 56.873, effective July 15, 1980, revenue bonds having passed the above mechanisms, and not requiring Commonwealth appropriations, must receive an "A" rating by Moody's Investors Service or the equivalent rating by another qualified rating agency prior to their sale.

Kentucky's General Fund lease appropriation bond ratings are Aa2 by Moody's, AA- by Fitch and A+ by Standard & Poor's. The implied general obligation bond ratings are Aa1 by Moody's, and AA- by Standard & Poor's. Revenue bonds backed by other (non-General Fund) dedicated revenues are typically rated at least a notch lower than General Fund bonds.[9]

[9] Communication with Marcia Adams at the Office of Financial Management

CONSERVATION FUNDING AT MANY LEVELS

Several public funding sources can be woven together to protect land in the Commonwealth of Kentucky. State, federal, local, and private conservation programs each have a role to play to help achieve conservation objectives. At the heart of the most successful state conservation programs is a substantial, long-term, dedicated source of state revenue. With a reliable source of funds, state governments can establish meaningful conservation priorities that protect the most valuable resources, are geographically distributed, and otherwise meet important statewide goals and values. State governments with significant funds are much better positioned to secure funding from federal governments and attract local government or private philanthropic partners.

A Livingston County project and Marrowbone State Forest Addition provide a good example of how conservation partners are leveraging multiple funding sources to acquire land for the protection of habitat and the provision of open space in Kentucky.

Livingston County, Wildlife Management Area and State Natural Areas

Bald Cypress
Livingston County WMA

The addition to the Livingston Wildlife Management Area and State Natural areas, just northeast of Paducah, is one example of garnering support for land conservation for an important resource. Prior to the addition the area was comprised of 1,025 acres. With the purchase of the Reynolds Metal tract the area now covers 1,898 acres. The addition will be incorporated into the WMA and also established as a State Natural Area, meaning that hunting will be allowed and the area is managed as a wildlife management area by the KY Department of Fish and Wildlife Resources. The land provides habitat for wildlife, including deer, turkey and songbirds and is located on the southern edge of the Mantle Rock Preserve, managed by The Nature Conservancy. The Reynolds tract, which also borders the area, contains an extensive mature oak forest with tree stands approaching old growth status at 80 to 120 years old. Additionally, there is approximately 230 acres of regenerating native prairie grassland, and tributaries to Sugarcamp Creek.

Protecting the land took the cooperation of several governmental agencies and non-profits—among them, Kentucky Department of Fish and Wildlife Resources, Kentucky State Nature Preserve, Livingston County Fiscal Court and The Nature Conservancy. The last addition was acquired in December 2009 from The Nature Conservancy. The Kentucky Heritage Land Conservation Fund (KHLCF) provided $1.5 million for the acquisition and initial management of the tract. Ongoing management costs are contributed by Livingston County, Kentucky Department of Fish and Wildlife Resources, and the Kentucky State Nature Preserves.

Marrowbone State Forest Addition, Metcalfe and Cumberland Counties

Also purchased in 2009 were 500 acres as part of the second phase of the Marrowbone State Forest, located in Metcalfe and Cumberland counties. The property is managed as a state forest as well as a wildlife management area. The entire forest and WMA is almost 2,000 acres with very little open land and is jointly owned and managed by Division of Forestry and Department of Fish and Wildlife Resources.

In order to protect this tract the state had to pull together multiple sources of state and federal funding to create a "funding quilt." In the end, funding was provided by the Department of Fish and Wildlife Resources, Kentucky Heritage Land Conservation Fund ($1.1 M) and USDA Forest Services' Forest Legacy Grant ($1.1 M) awarded to the Division of Forestry.

Hawthorne Crossing, Campbell County

A 2008 press release from the Governors office indicates that tourism is Kentucky's third-largest industry, with a $10.1 billion annual economic impact, generating 175,000 jobs in the state and $987 million in tax revenue. A study of the U.S. Horse Industry illustrated that in Kentucky the recreational horse industry produces a total economic impact valued at $471 million.[10] Kentucky's park system also adds to the adventure tourism industry through a variety of recreational offerings and numerous overnight - "resort park" - accommodations, which outnumber any other state.[11] Thus, any funding sources identified for land acquisition in Kentucky must provide for continued recreational opportunities, including trails for horseback riding.

An example, of a recent recreation acquisition is the Hawthorne Crossing in Campbell County. In August 2008, the Campbell County Conservation District purchased the 135 acre property located near the metro northern Kentucky/Cincinnati area and has frontage along the Licking River. The property was funded through the Kentucky Heritage Land Conservation Fund, the first KHLCF project in Campbell County. While not yet open to the public, much work has been done to prepare this property for public recreation use. Hiking, birding and river access for kayaking and canoeing will be elements of this property. KHLCF provided the funding for acquisition in the amount of $752,313. The Campbell Conservancy and the Campbell County Fiscal Court joined together to purchase an additional 5 acres to make the project viable. The Conservation district is working with several groups to develop and manage the property. Additionally, since the property has frontage on the Licking River, the Conservation District is also coordinating work with U.S. Fish and Wildlife Service.

[10] *Economic Impact of the Horse Industry on the United States*, April 2007, American Horse Council
[11] http://governor.ky.gov/pressrelease.htm?postingguid={5b5db090-4a63-404a-a8b9-083ad8ecfcf9}

EXISTING KENTUCKY FUNDING FOR LAND CONSERVATION

Kentucky Heritage Land Conservation Fund

The Kentucky Heritage Land Conservation Fund (KHLCF) was created in 1994 in order to fulfill the funding requirements of the Kentucky Heritage Land Conservation Act of 1990. The fund is managed by a 12-member board appointed by the governor. Revenue is generated through a portion of the unmined mineral tax, environmental penalties and from the sale of environmental license plates. Statute requires that $150,000 of environmental fines goes to the Environmental Education Council for environmental education programs and that $400,000 of unmined minerals tax revenues goes to the Kentucky Division of Fossil Fuels and Utility Services for the purpose of public education of coal-related issues. Fifty percent of the remaining revenue is divided evenly among the Nature Preserve Commission (10 percent), Department of Fish & Wildlife Resources (10 percent), the Division of Forestry (10 percent), the Department of Parks (10 percent), and the Wild Rivers Program (10 percent). The other fifty percent goes to local governments, state colleges, Universities and other public agencies. Furthermore, the legislation establishes priorities for acquiring properties, which include:[12]

- Natural areas that possess unique features such as habitat for rare and endangered species;
- Areas important to migratory birds;
- Areas that perform important natural functions subject to alteration or loss;
- Areas to be preserved in their natural state for public use, outdoor recreation and education.

Members of the KHLCF Board

Board Member Name	Title	Agency Represented
Dr. William H. Martin	Board Chairman	Kentucky Academy of Science
Carl Wedekind	Vice-Chairman	Natural Resources Land Acquisition Experts
G. William Little	Treasurer	Environmental Organizations
Carl Campbell	Commissioner	Department of Natural Resources
Jon Gassett	Commissioner	Kentucky Department of Fish and Wildlife Resources
Gerry van der Meer	Commissioner	Kentucky Department of Parks
Don Dott	Director	Kentucky State Nature Preserves Commission
W. Horace Brown	Council Chairman	Environmental Education Council
Franklin D. Fitzpatrick	Representative	Kentucky Chapter of the Nature Conservancy
Phyllis Amyx	Representative	Agricultural Organizations
Paul M. Sheets	Representative	League of Kentucky Sportsmen
Dr. Richard K. Kessler	Representative	Kentucky Academy of Science

[12] Kentucky Heritage Land Conservation Fund FY 2009 Annual Report

Since 1995 KHLCF has helped to protect and conserve over 37,000 acres at a cost of $41.6 million. Not including FY 2010 this amounts to 118 properties that cover 55 different counties. Approximately seventy six percent of the total acreage was conserved by state agencies, twenty percent by local governments and conservation districts and four percent by universities. The table below provides more detail on the number of projects, acres conserved and total funding provided to each grant applicant. The table to the right provides a year by year detail of acres acquired and dollars spent since 1996. On average, the program has conserved a total of 2,519 acres per year.

Kentucky Heritage Land Conservation Fund: Conservation Activity 1996-2010

Year	Acres	Dollars
1996	154	$117,118
1997	1,946	$977,437
1998	4,290	$2,411,352
1999	1,380	$2,150,818
2000	3,870	$4,455,585
2001	3,217	$4,399,347
2002	466	$323,489
2003	1,655	$2,742,659
2004	6,479	$5,896,013
2005	1,549	$1,533,976
2006	2,957	$3,564,226
2007	3,187	$2,262,361
2008	2,339	$3,323,394
2009	1,609	$3,425,407
2010	2,679	$4,106,098
Total	**37,779**	**$41,689,280**

Kentucky Heritage Land Conservation Fund: Project Overview by Applicant [13]

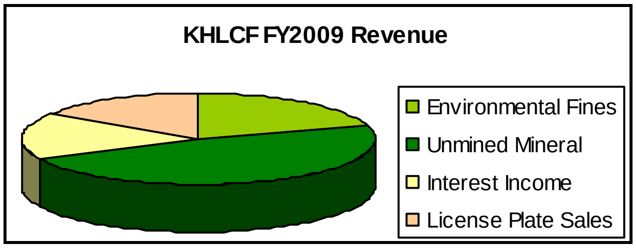
Applicant	# of Projects	Acreage Conserved	Funding*
Fish and Wildlife Resources	8	4,318	$4,451,521
Forestry	12	3,229	$3,315,134
Nature Preserves	31	7,015	$5,760,321
Parks	10	945	$1,622,854
Wild Rivers	7	2,192	$2,377,905
Multiple Agencies	7	7,405	$8,112,546
County Governments	25	4,561	$8,294,937
City Governments	6	438	$1,318,805
Metro Governments	5	1,265	$3,303,318
Colleges/Universities	5	1,369	$3,069,576
Conservation Districts	2	201	$1,179,784
TOTAL	**118**	**32,938**	**$42,806,701**

*Includes both acquisition and management costs. Data for FY 2010 not included.

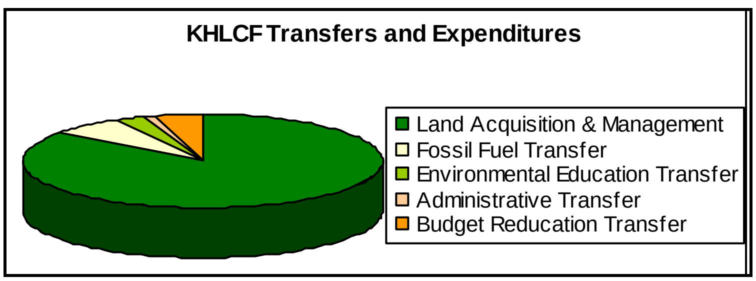
Budget

The Fiscal Year 2009 combined revenue for the KHLCF, which includes environmental fines, unmined minerals, interest income, and license place sales, totals approximately $4.4 million. This is 37 percent lower than the receipts in FY 2008, which can be attributed to a downward trend in license plate sales, the loss of interest income, and a volatility of Environmental Fines.[14]

[13] Table copied from Kentucky Heritage Land Conservation Fund FY 2009 Annual Report, p. 2
[14] Kentucky Heritage Land Conservation Fund FY 2009 Annual Report, p. 9.



In FY 2010 the KHLCF faced other reductions in revenue as a result of actions taken by the 2008 and 2009 General Assemblies. Effective June 30, 2009, $17 million dollars of cash from KHLCF was transferred to the General Fund to be replaced by the same amount in bond funds. However, as a result of the swap of funds, the majority of the interest income (17 percent of total revenue in FY 2009), will no longer be available to KHLCF. Additionally, due to state budget shortfalls, $250,000 was transferred from KHLCF in FY 2009 and another $250,000 in FY 2010.[15] Total transfers and expenditures in FY 2009 was approximately $5.8 million.



KHLCF Limitations

The Kentucky Heritage Land Conservation Fund is the primary source of public financing for land conservation in Kentucky. However, the amount of revenue received for KHLCF does not allow for the acquisition of large tracts of land that have and will continue to become available as corporations and individuals with large acreage (1000s of acres) divest of land holdings. In order to meet this demand there must be a substantial and sustained funding stream[16]

The current revenue components of the fund vary widely from year to year, which creates uncertainty about the next round of funding at the agency level. To understand any strengths or weaknesses of the land conservation programs in Kentucky, the Land Stewardship and Conservation Task Force conducted a survey of Kentucky's main conservation agencies. The findings echoed the need for additional land conservation funding and the expansion of KHLCF fundings. Agency employees indicated that there is a gap between the lands available to be purchased and available dollars to make needed acquisitions. Additionally, the survey revealed that programs such as PACE are jeopardized. These programs receive no KHLCF funding and no

[15] KHLCF FY 2009 Annual Report, p. 9.
[16] E-mail communication with Dr. William Martin, KHLCF Board Chairman

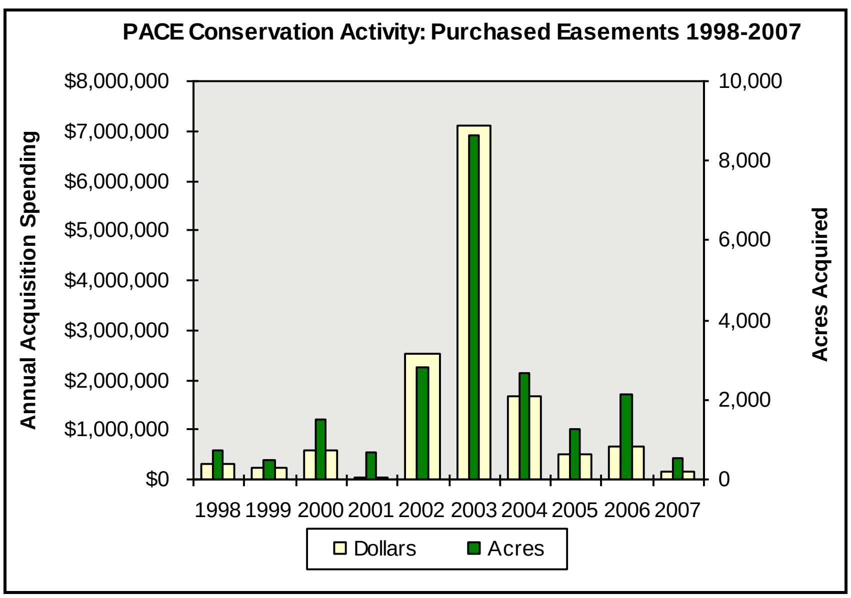
general appropriations and as a result are in a difficult position to obtain matching funds for federal dollars.[17]

Kentucky Farmland Protection and Easement Program

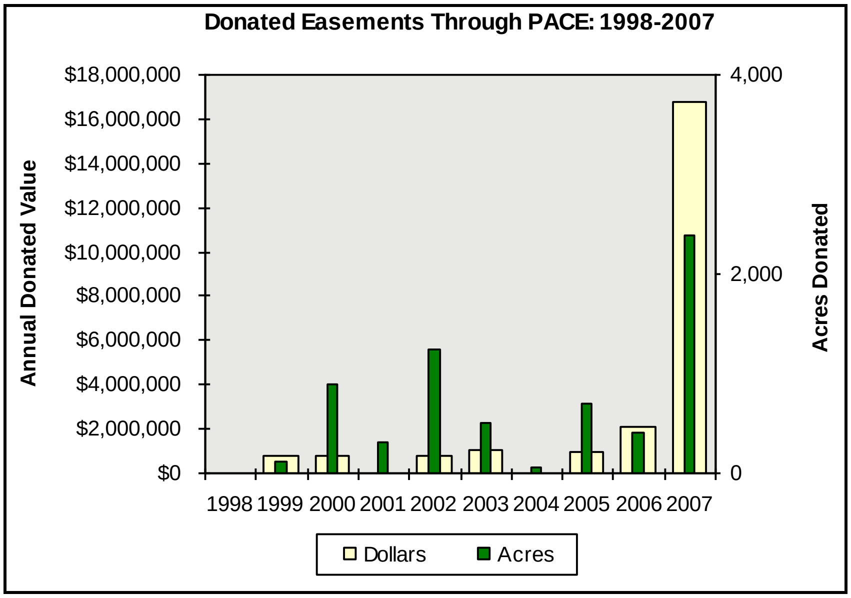
The Kentucky General Assembly established Kentucky's Purchase of Agricultural Conservation Easement Program (PACE) in 1994. Initial funding was provided through a $10 million state bond issuance paid by tobacco settlement funds. The program requires a minimum General Assembly appropriation of $400,000 to execute its minimum objections. Until 2008 the program received this annual appropriation; however since 2008 the state has struggled to fully fund the program. PACE gives the state the authority to purchase agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture. Donors of conservation easements are eligible to receive federal and state income tax and estate tax benefits.

Since its inception the PACE program has purchased agricultural conservation easements on 89 farms totaling 21,451 acres for approximately $18 million. In addition, there have been 46 donated easements on 6,611 acres, which brings the combined inventory to 135 farms containing 28,062 acres.

While the farms protected are quite numbered, the program has received applications to protect over 160,000 acres, many of which met requirements, but could not be purchased due to a lack of funding. The tables below provide a yearly summary of purchased easements and donated easements.



[17] Land Stewardship and Conservation Task Force Report, p. 27.



Kentucky's Agricultural Districts Program[18]

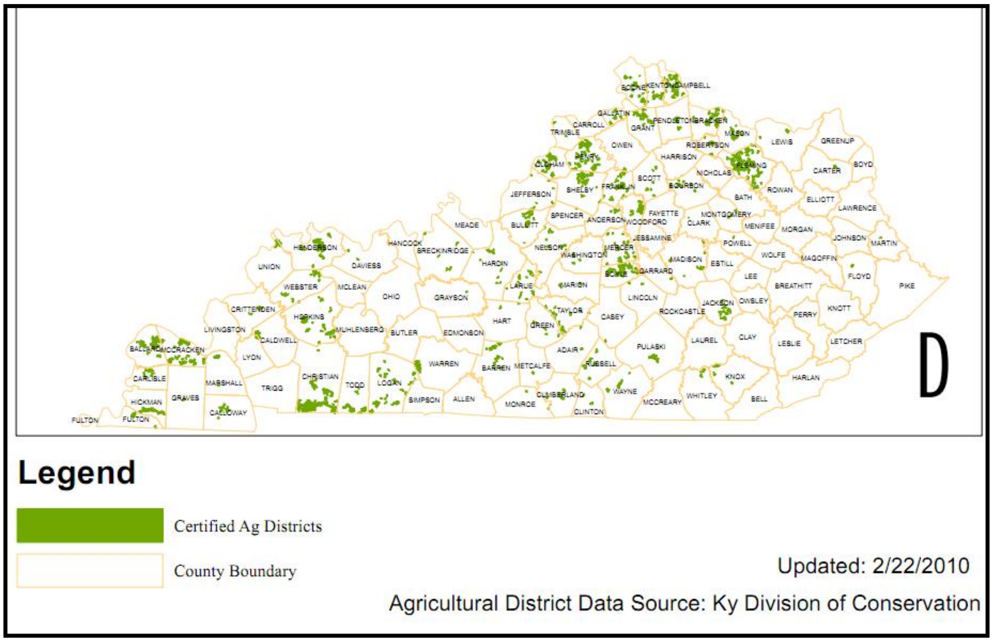
In 1982 The Kentucky General Assembly passed the Agricultural District and Conservation Act, which created a program within the Division of Conservation, called the Agricultural District Program.[19] The act established the goal of protecting the best agricultural land for food and fiber production and to prevent its conversion to nonagricultural usage.

Land enrolled in the Agricultural District Program cannot be annexed, cannot be condemned without mitigation, is taxed at the agricultural rate, is eligible for deferred assessment costs when water lines are extended and receives extra points when applying for state Cost Share or to the Purchase of Agricultural Conservation Easements (PACE) Program.

A landowner or group of landowners with at least 250 contiguous acres in active agricultural production is eligible to form an agricultural district. Individual parcels must contain at least 10 acres or 11 acres with a homestead. The total acreage in the district may drop below 250 over time, but individual parcels must remain at 10 or 11. Participation is strictly voluntary, and a landowner may withdraw land at anytime without penalty or without jeopardizing the status of the existing agricultural district.

Currently, there are 3,552 landowners participating, totaling 502 certified agricultural districts consisting of approximately 510,500 acres in 80 of Kentucky's 120 counties.

[18] http://conservation.ky.gov/Pages/AgriculturalDistricts.aspx
[19] KRS 262.850


D
Legend
Certified Ag Districts
County Boundary
Updated: 2/22/2010
Agricultural District Data Source: Ky Division of Conservation

BEST PRACTICES FROM AROUND THE COUNTRY

Recognizing that significant new funding will be necessary to meet land acquisition, management and maintenance needs for fish, wildlife, agriculture, and recreation in Kentucky it is instructive to look at examples from other states. Conservation finance principles and strategies that contribute to effective statewide land conservation are described here. Five approaches are highlighted.

Of course, no single approach will be sufficient on its own. Participation is necessary at many levels, for one entity or program cannot achieve all goals. Successful land conservation requires an array of funding sources and conservation tools, using top-down incentives and funding as well as enabling legislation to encourage bottom-up leveraging of conservation dollars.

Substantial State Investment

The foundation of an effective statewide land conservation program is strong fiscal commitment on the part of state government through a stable revenue source. Substantial state investment fosters program development and long-term vision. Some existing state programs rely on a single revenue stream, while others use a combination of dedicated revenue sources.

Common Revenue Streams for State Land Conservation Programs

Revenue Stream	Selected Examples
General obligation bonds	California, Nevada, Rhode Island, Ohio
Sales tax	Arkansas ,Missouri, New Jersey, Minnesota
Lottery income	Arizona, Oregon, Colorado, Minnesota
Real estate transfer tax / fees	Florida, Massachusetts, Illinois, West Virginia
General fund appropriations	Arizona, Washington, Utah

Other state revenue sources include license plate revenues, hunting and fishing license fees, hotel/motel tax, cigarette tax, state income tax, and oil and gas revenue.[20]

Enable Local Financing

Federal and state governments by themselves often cannot meet conservation needs. Communities are looking for local financing options to fill the gap. State enabling legislation makes local governments partners in protecting open space resources. Common local financing options include the property tax, local option sales tax, and general obligation bonds. Other local revenue sources include special assessment district fees, impact fees, local income tax, and real estate transfer tax.

[20] For more information about other states' conservation programs, www.landvote.org or TPL's Conservation Almanac at www.conservationalmanac.org,

Common Revenue Streams Authorized for Local Conservation Programs

Revenue stream	Selected states that authorize local use
Property tax	Washington, New Jersey, Massachusetts
Sales tax	Arizona, Colorado, Florida, New Mexico
General obligation bonds	Arizona, California, Colorado, Montana, New Mexico, Utah
Income tax	Pennsylvania
Real estate excise tax / fees	Washington, Maryland, New York

State Incentives for Local Conservation

State incentives for local action strengthen partnerships between state and local governments. Incentives, often in the form of matching grants and low-interest loans, encourage local governments and nonprofit conservation organizations to develop programs and create financing mechanisms to leverage state funds.

Local Incentives

With regard to dedicated local funding for land conservation, communities in Kentucky fall behind some of their counterparts around the country. The table to the right shows the number of local funding measures adopted for parks and open space through referenda held between 1998 and 2010 in several states. If Kentucky wants to meet its park and land conservation goals it should consider emulating those states that have spurred local participation.

Local Conservation Finance Measures: 1998-2010

State	Conservation Funds Approved	# Measures Passed
NJ	$3,754,939,572	343
MA	$509,873,263	177
PA	$934,364,012	102
FL	$2,440,600,874	53
IL	$1,231,809,549	42
OH	$559,290,452	32
NC	$603,708,735	31
GA	$668,610,000	23
VA	$286,135,696	18
SC	$370,071,200	10
MD	$25,967,000	7

Source: TPL's LandVote Database -- www.landvote.org

To increase local government participation in land conservation efforts, the state could consider increasing funding for local grants from the state conservation funds. The state also could consider establishing a revolving loan fund that would be available to local governments that adopt a local open space funding measure. This type of incentive structure has triggered significant local participation in several other states including Colorado, Massachusetts, and New Jersey.

For example, in 1989, the New Jersey legislature enacted legislation authorizing counties and municipalities to establish a voter-approved Open Space Trust Fund supported by property taxes. The Green Acres Planning Incentive Program was then created to offer 50 percent matching funds and two percent interest loans for 20 years to communities with open space and recreation plans

(OSRP) and dedicated open space taxes. Since then, all 21 counties and more than 200 municipalities in the state have established an open space tax by voter referendum. The program in Florida has structured the matching provisions to specifically encourage the largest and/or fastest growing communities to provide local funds for land conservation.

Example: Boone County, Kentucky

In November 2008, Boone County became the first local government in Kentucky to place a conservation finance measure on their local ballot. The measure was a 2.2 cents per $100 of assessed value property tax increase which could be used to fund the acquisition of natural areas along with park operations and maintenance. The cost per year on a $200K home was $44. The measure read as follows:

Are you in favor of the proposal entitled: The creation of a dedicated natural areas and parks fund ('Park Fund') for the purposes of the purchase and maintenance of public parks, to improve water quality, to preserve forests and wildlife habitat, as well as to provide active parks and recreation services, in Boone County, Kentucky through an ad valorem (property) tax not to exceed two point two cents ($.022) on each one hundred dollars ($100.00) assessed valuation of all taxable property within the limits of Boone County?

Despite a coalition led by Vision 2015, a group focused on economic and social issues in Northern Kentucky the measure overwhelmingly failed with 33 percent support. Kentucky remains one of only six states to never have passed a conservation finance measure for the protection of land. Indiana, Mississippi, Nebraska, North Dakota, and South Dakota, round out the list.

State – Federal Partnerships

A partnership that joins the desires and goals of multiple levels of government to protect natural resources encourages coordinated actions that further open space preservation. State and federal partnerships broaden the base of support for land conservation goals and leverage scarce conservation resources. A list federal programs which have been used in Kentucky is located towards the end of the report.

Purchase of Development Rights

Aside from fee simple purchase of land, one of the most effective devices for protecting open space and farmland in the long term is easement purchase -- commonly known as purchase of development rights (PDR). The primary goal of PDRs is permanent preservation of land by retiring the right to develop the property. Typically, landowners place a permanent conservation easement on the property (held by a government entity or conservation organization) in exchange for payment equal to the value of the development rights.

Most PDRs are designed for farmland preservation, also called Purchase of Agricultural Conservation Easements (PACE) programs. Increasingly though, communities are recognizing the advantages of PDRs for realizing other land conservation goals.

PDRs represent an important means of maximizing state and local conservation efforts. Advantages include permanent protection while keeping land in private hands and on the tax rolls. Ironically, the biggest challenge facing PDR programs is their popularity -- even some of the most active programs are not able to keep up with the demand to sell development rights. For every landowner who sells easements several many more are turned away for lack of funding. Incentive programs need to be solid in terms of annual funding and long-term commitment.

Conservation Tax Credits

In recent years, several states have sought to enact provisions in law that provide specific tax benefits for individuals and companies to donate land to public and nonprofit entities for conservation purposes. Tax incentive programs offer a tremendous supplement to other state open space funding initiatives by encouraging private, voluntary land conservation.

State tax incentives, particularly when combined with a federal income tax deduction, may make conservation a more feasible and attractive option for landowners than development. When a donation of property, or an interest in land, is made, a state tax credit offsets a landowner's tax liability on a dollar-for-dollar basis, equivalent to the value of the donation up to the limits set by the program. For instance, North Carolina's Conservation Tax Credit Program allows landowners to claim a state income tax credit of 25 percent of the fair market value of a land or easement donation, up to $250,000 for individuals and $500,000 for corporations with a five-year carryover if credits exceed tax liability in any one year. More than 400 individual and corporate property owners have donated 82,000 acres of land or conservation easements worth an estimated $165 million, at a cost to the state of approximately $26 million. Approximately 20 percent of donations are made by conservation easement.

Programs can be targeted to meet specific conservation objectives, such as open space conservation, watershed protection, and farmland preservation, with strict guidelines typically established for evaluating the eligibility of parcels. Other important program elements include a reasonable annual issuance cap to limit the state's exposure to revenue reductions; carry over provisions, which allow landowners to apply the credits over more than one year; and a sunset provision for the legislation authorizing the tax credit program, which would allow the state to evaluate and revise the program.

RECENT STATE LEADERSHIP IN LAND CONSERVATION FUNDING

Minnesota

In November 2008, Minnesota voters approved a Constitutional Amendment entitled, "The Clean Water, Land and Legacy Amendment," with 56 percent of voter support. This ballot measure was the largest in U.S. history and will generate more than $5.5 billon dollars for land and water conservation. This is nearly double the largest previous ballot measure – New Jersey's 1998 Garden State Preservation Trust Act, which dedicated $2.94 billion in sales tax proceeds ($98 million/year for 30 years.)

The Clean Water, Land and Legacy Amendment reads as follows: "Shall the Minnesota Constitution be amended to dedicate funding to protect our drinking water sources; to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve our arts and cultural heritage; to support our parks and trails; and to protect, enhance, and restore our lakes, rivers, streams, and groundwater by increasing the sales and use tax rate beginning July 1, 2009, by three-eighths of one percent on taxable sales until the year 2034?".

The historic success of the Clean Water, Land and Legacy Amendment will increase investment in clean water, natural areas, cultural legacy, and parks and trails by about $290 million a year for 25 years. Approximately $220 million a year will go to protect and restore natural areas, parks, and lands vital for water quality. Projects can be proposed by the Department of Natural Resources and the Minnesota Pollution Control Agency as well as other organizations and agencies. The Legislature will make final funding decisions based on the merits of the projects.

Ohio

The Clean Ohio Fund restores, protects, and connects Ohio's important natural and urban places by preserving green space and farmland, improving outdoor recreation, and by cleaning up brownfields to encourage redevelopment and revitalize communities. The citizens of Ohio originally voted in 2000 to pass a Constitutional Amendment to establish the Clean Ohio Fund with a $400 million bond program. In 2008, voters authorized another Constitutional Amendment that provided the Fund with another $400 million in bond funding. The ballot measure passed with 69 percent of the vote and was supported in all 88 counties. Both measures were constitutional amendments.

The Clean Ohio Fund consists of four competitive statewide programs administered by different state agencies: the Clean Ohio Revitalization Fund, the Clean Ohio Agricultural Easement Purchase Program, the Clean Ohio Green Space Conservation Program, and the Clean Ohio Trails Fund.

During the first four rounds, $200 million of the total $400 million went towards Brownfield Redevelopment, $150 million towards Green Space Preservation, and $25 million each towards Agricultural Easement Purchase and Trails. Funding in the second bond program will be divided amongst the programs the same as during the first four rounds.

The Fund has supported more than 700 projects in 86 of Ohio's 88 counties. More than 26,000 acres of wildlife habitat and 20,000 of family farms have been protected. The trails program has helped to create over 216 miles of multipurpose trails and the brownfields program has provided 173 cleaner sites.

Iowa

On November 2, 2010, Iowa took the first step to secure sustainable funding for the state's natural resources and recreation. Voters approved Iowa's Water and Land Legacy constitutional amendment with 63 percent of the vote.

A bipartisan group of stakeholders and legislators was formed in 2006 to find the best solution to protect Iowa's natural resources. After years of research and debate, the group recommended creating a constitutionally protected trust fund to provide sustainable funding for our natural resources. The amendment was overwhelming passed by two consecutive sessions of the General Assembly and approximately one hundred organizations joined together under an umbrella coalition called Iowa's Water & Land Legacy to support the amendment.

Iowa's Water and Land Legacy amendment creates a dedicated trust fund for the purposes of protecting and enhancing water quality and natural areas in the state including parks, trails, and fish and wildlife habitat and conserving agricultural soils in this state. The amendment, however, does not include a tax increase. Trust Fund revenue will come from allocating sales tax revenue the next time the Iowa Legislature approves a sales tax increase. At that time three-eights of one cent (0.375) from sales tax revenue will forever be allocated to the Trust Fund. Once the sales tax is raised, it is estimated that it will fund the Trust with $150 million per year.

Iowa's Water and Land Legacy would dedicate significant funds for wetlands restoration, water quality programs, and other projects that would help reduce, prevent, and mitigate the impacts from future flooding. In addition, revenue will be targeted for natural resources management, additional funding for Iowa's REAP - Resource Enhancement and Protection - program, and local conservation partnership programs as part of a strategic effort to best address conservation needs in local communities. Agricultural and land stewardship programs and recreation projects such as trails also will receive funding from the Trust Fund.

West Virginia

In 2008, the West Virginia legislature approved a bill that makes a new state investment in the conservation of important wildlife habitat, natural areas, forestland, and farmland and establishes a statewide land conservation fund, the Outdoor Heritage Conservation Fund. The Voluntary Rural & Outdoor Heritage Conservation Act dedicates revenue from a $4 flat fee on the recording of deeds and $5 flat fee on the recording of other documents to land conservation.[21] Half of the revenue from these fees will be directed to the new state-level Outdoor Heritage Conservation Fund created by the legislation and half will be directed to the state-level Farmland Protection Fund.

This initial state investment will begin to leverage private, federal, and in some cases local dollars to enable conservation of West Virginia's outstanding natural assets. A broad spectrum of interests supported the legislation: land trusts, farmland protection boards, hunting and fishing organizations, wildlife groups, landowners, and business leaders. The coalition supporting this legislation emphasized the economic and quality of life returns that West Virginians will see from investing in the conservation of outstanding natural areas, wildlife habitat, forestland, and farmland, and the value of conserving their natural heritage for future generations.

[21] West Virginia Code §59-1-10 The code relates to a new recording fee for the recording of certain trustee's reports of sale.

BENCHMARKING KENTUCKY

Substantial State Investment

Kentucky's existing statewide conservation programs have made significant strides in protecting Kentucky's natural heritage. Kentucky has made regular allocations of public funding for land conservation in the state; however funding levels face an uncertain future. Currently, 5.82 percent of the state is permanently preserved. Although there is not a recent state analysis of conservation funding need, it is estimated that to reach the goal of 7% conserved in 20 years, the state would need to acquire approximately 305,000 acres and spend an estimate of $458 million or $22.8 million per year.[22] It should be noted that this goal of protection is simply for illustrative purposes and not based on thorough analysis of need.

A total of 667 PACE applications are currently pending, covering more than 129,000 acres with an easement value of over $100 million. Private land conservation alone will be unable to meet this need. Consequently, to increase Kentucky's public investment in land conservation over the long-term, there are real advantages to establishing a larger, more secure dedicated source of funding for these efforts.

Land Conservation Spending & Acres Conserved using State Funds, Select Neighboring States 1998 - 2008

State	State $ Spent	Acres Conserved	$ per Capita
North Carolina	$1.08 billion	795,330	$120
Virginia*	$843,999,004	558,165	$109
South Carolina	$201,661,960	211,996	$46
Tennessee**	$124,192,167	100,062	$20
Illinois	$247,725,417	--	$19
Kentucky***	$46,856,559	52,839	$11
Missouri	$42,431,591	36,907	$7

Source: TPL Conservation Almanac
*Data through October 2009
**SLAF Dollars for 2006 are appropriations and acres not included
***PACE data not included for year 2008

Kentucky spends comparatively little per capita on land conservation – well below a selected group of peer states. Between 1998 and 2008 state governments in the surrounding area spent an average of $50 on land acquisition for parks, recreation and open space per person, but the Kentucky state government spent $11 per person (78 percent below surrounding states).[23]
When comparing conservation activity by just state funding against its peer states and others around the country, Kentucky ranks low in spending and acres acquired, as illustrated in the above chart. Tennessee spent approximately $123 million between 1998 and 2008 to acquire over 108,457 acres while Kentucky spent $46.8 million to acquire 52,839 acres.

As of January 2009, 22 states had active state-level purchase of agricultural easements (PACE) programs. An additional five states--Arizona, Florida, Georgia, Hawaii and Texas--have authorized PACE but have not set up programs. Dozens of local communities and private land trusts supplement state programs or, where none exist, independently protect agricultural land.

[22] Based on $1,500 per acre.
[23] TPL's Conservation Almanac

States like Kentucky with older PACE programs have achieved important milestones. Five states--Colorado, Maryland, New Jersey, Pennsylvania and Vermont--have each protected more than 125,000 acres of farmland. And states like Delaware, Maryland and New Jersey have made headway by protecting a significant percentage of their agricultural land base.

Seven states--Colorado, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, and Pennsylvania-- have invested more than $100 million each in farmland protection with New Jersey and Pennsylvania having spent $758 million and $676 million, respectively.[24] Pennsylvania Department of Agriculture has conserved approximately 339,000 acres compared to just over 24,000 acres conserved by Kentucky's Department of Agriculture.

Kentucky has 51 state parks totaling approximately 58,000 acres of protected land while Tennessee has over 154,374 acres of parkland throughout the state. Kentucky has three types of lands open to public access for hunting, fishing and other related recreation. Some are owned by the Fish and Wildlife Department, others are under lease agreement with the department (either for management and access or access only) and still other areas are open to public access by the private land owner (without lease agreement) and are advertised by the department as open for public use. Leased acres and owned acres comes to a combined total of 83 wildlife management areas at 575,697 acres. Of this, just 135,312 acres or 24 percent are state owned, covering 48 Wildlife Management Areas (WMAs).[25] However, the Tennessee Wildlife Resources Agency protects just over 1,459,000 acres in wildlife management areas.[26]

The most viable financing options to provide significant new funds for conservation activities in the state may include dedicating monies from existing revenue sources and/or issuing state general obligation bonds. These funding mechanisms, along with potential new sources, are described in detail in the next section of this report.

[24] American Farmland Trust, State Farmland Preservation Efforts Off Pace in 2008. www.farmland.org/news/pressreleases/PACEEfforts2008
[25] Communication with Chris Garland, KY Department of Fish and Wildlife Resources
[26] 2010 TWRA Report on Managed Lands (note – report only includes information on lands owned by TWRA)

STATE REVENUE OPTIONS FOR CONSERVATION

A number of potential revenue sources have been considered in recent years to fund natural area acquisitions including open space, recreational lands, farmland, and wildlife habitat in Kentucky. The Trust for Public Land focuses on those options that are significant, pragmatic, and proven. This study will primarily look at the state sales tax, drawing upon research and recommendations from the Kentucky Land Stewardship and Conservation Task Force report, the sales tax on sporting goods and general obligation bonds, as well as a couple of smaller revenue streams: the unmined mineral tax and document recording fees.

As a reminder, when evaluating the range of funding options available for land conservation in Kentucky, it is helpful to keep several factors in mind. These funding favorability factors include:

- **Nexus between funding source and land conservation**. Is there a natural linkage between the funding source and land conservation? While not essential, this is seen as important to making the case for use of these funds for land conservation efforts.

- **Revenue raising capacity**: Will the revenue source raise enough money to accomplish reasonable conservation objectives? It requires a significant effort to establish a new funding source and it must generate adequate funding to warrant such an effort.

- **Reliability**: Will the source provide reliable funding, or will it suffer fluctuations due to the economy? Will it be subject to diversions to other emerging priorities?

- **Competition**: Are there other state agencies or programs competing for the same funding source?

- **Precedent**: Has another state used the intended funding option for land conservation? Has Kentucky used the funding option for other services and programs? Breaking new ground can be challenging but is possible even if there is no precedent.

- **Political feasibility:** Is there a political champion who will lead the effort to establish a funding source? In many states where there have been successful efforts to establish dedicated funding for land conservation, this leadership has come from the governor and legislature. Another aspect to political feasibility is the presence of likely opposition. Certain funding options such as the real estate transfer tax have a built-in, organized opposition that can be hard to neutralize.

- **Potential partners:** Can supporters of land conservation align themselves with other groups to mutually establish a new funding source? (for example: sportsmen, water resource protection, recreation, etc)?

- **Public Support:** If the funding source will require voter approval through a ballot measure, will voters be likely to support increased taxes or spending for these purposes?

Land Stewardship and Conservation Task Force [27]

In 2007, House Concurrent Resolution (HCR) 120 established the Land Stewardship and Conservation Task Force to analyze the Commonwealth's strategy for the protection of natural areas, farmlands, habitats, and forests. The task force was directed to report findings and recommendations to be used in creating a comprehensive land stewardship and conservation program called "Conserve Kentucky." The purpose of the program was to foster statewide planning for land conservation and improve the state's ability to increase participation by private landholders in land conservation efforts. Many of the recommendations set forth by this task force have been examined and in many cases included in this feasibility study.

Action 3 of the findings by the Task Force, released in 2008, called for the General Assembly to identify and dedicate additional sources of funding for land conservation programs, including Purchase of Agricultural Conservation Easements.

The task force considered current land conservation programs in the Commonwealth and successful conservation programs implemented in other states. The task force discussed the findings of the 2008 Report of the Land Stewardship and Conservation Task Force (Research Memorandum No. 502), and received status updates on land conservation programs operated by the Kentucky Department of Fish and Wildlife Resources, the Division of Forestry, the Kentucky Heritage Land Conservation Fund, and the Kentucky Purchase of Agriculture Conservation Easements program. The task force also received testimony on the elements of successful land conservation legislation in other states, and discussed the inclusion of these elements in legislative proposals for the 2010 General Assembly.

The task force adopted the following legislative findings and proposals:

- Responsible land stewardship is necessary to protect water resources and agricultural and forest lands, to curb fragmentation and destruction of wildlife habitats, to prevent the loss of outdoor recreation space; promote tourism, and to preserve the state's essential ecological functions and biodiversity.
- Legislation should be enacted to, among other things, expand protection of wildlife habitat, agricultural lands, forests, and woodlands through the acquisition of public lands either in fee simple, by the use of easements or leases, or by donations or other legal arrangements between government agencies and willing private landowners.
- A Land Stewardship and Conservation Fund should be established to receive money from various sources to be used to conserve and protect in perpetuity land with special environmental, agricultural, educational, or recreational significance.
- A Land Stewardship and Conservation Board should be established for the purpose of administering the Fund.
- **Legislation should be proposed to amend the state constitution to increase the state sales tax by one-eighth of 1 percent in order to provide a dedicated revenue source for the fund.**

[27] Text excerpted from findings of the 2008 Report of the Land Stewardship and Conservation Task Force (Research Memorandum No. 502)

General Obligation Bonds [28]

The Kentucky General Assembly must specifically appropriate all capital projects over $600,000 as a line item in the biennial budget and authorize the funding source to be used for each project (ex. General Funds, Restricted Funds, Bond Funds, etc). Projects are requested through the agency budget submission process which begins in the fall of each odd numbered year for state agencies. The Commonwealth is constitutionally restricted from issuing General Obligation bonds for projects over $500,000 without voter approval. [29] Kentucky has not issued General Obligation bonds since the early-1960s and currently has no outstanding G.O. debt.

However, the Commonwealth does have the statutory ability to borrow for its capital needs (for projects authorized by the General Assembly to be funded with bonds). This is primarily done through the issuance of revenue bonds by the State Property and Buildings Commission (created and governed under KRS chapter 56). The Commission issues bonds in its own name. The revenue pledge for repayment of principal and interest on the bonds is most often in the form of state General Fund appropriations made by the General Assembly during each budget session (each even numbered year), but bonds have been authorized and issued from time to time on behalf of various state agencies or universities supported by a dedicated pledge of agency revenues.

The Commonwealth has issued bonds for a wide variety of capital projects including land conservation. The long standing policy of the Executive and Legislative Branches is that the capital needs of the Commonwealth can be met more expeditiously through the use of the biennial lease appropriation process. The Commonwealth has never defaulted on any lease appropriation obligation and as a result continues to enjoy market access that is well received by the investor community. Kentucky's General Fund lease appropriation bond ratings are Aa2 by Moody's, AA- by Fitch and A+ by Standard & Poor's.

Borrowing by issuing bonds presents a number of opportunities and drawbacks. On the one hand, borrowing can provide the state with the revenue and flexibility it needs up front to fund large-scale conservation projects, when land is available and less expensive than it will be in the future. Bonds ensure a steady stream of funding that is not dependent on the fluctuations of the operating budget. Costs are typically spread out over a long time horizon and therefore borne by both current and future beneficiaries. On the other hand, financing charges accrue, and voters must approve of the merits of incurring debt. Additionally, General Obligation bonds proceeds may not be used for maintenance and operations. They are solely used for capital projects.

At the state level, there is generally stiff competition for G.O. debt among many programs in need of financing. It is important to keep in mind that in times of budget shortfalls, the Legislature may suspend issuance of millions of dollars in voter-approved bonds.

The General Assembly would have to pass a measure to place the capital item on the ballot, which would also identify the revenue stream that would be pledged to the repayment of the obligation.

[28] Excerpted from conversation with Kentucky Office of Financial Management
[29] Sections 49 and 50 of the Kentucky Constitution impose this requirement.

The measure would require a 3/5ths majority of each chamber in order to be placed on the ballot and a simple majority of the voters to pass.[30]

Hypothetically, the Commonwealth could place a $30 million bond issue on the ballot and if approved would pay an annual debt service of about $3.9 million annually for 10 years.

In FY10, $17 million in cash from the KHLCF account was transferred to the General Fund to be replaced by an equivalent amount of bond funds as authorized by the 2008 and 2009 General Assemblies. As a result of the swap in cash for bond funds, the majority of interest income, which represented 17 percent of the total fund revenue in FY09, is no longer available to KHLCF.

Kentucky Bond Financing Chart

Assumes a 10-year bond issue at 5% Interest rate

Bond Issue	Annual Debt Svce
$ 20,000,000	$ 2,590,091
$ 30,000,000	$ 3,885,137
$ 40,000,000	$ 5,180,183
$ 50,000,000	$ 6,475,229

Coincidentally, the last GO bond voted on by the Commonwealth dealt with the establishment of public parks in Kentucky. The ballot language was as follows:

"Are you in favor of the Act of the General Assembly known as House Bill No., enacted at the regular session of 1960, wherein it is proposed that the Commonwealth issue and sell its general obligation bonds, in addition to all bonds theretofore authorized by the voters, in the principal sum of one hundred million dollars from the proceeds of which ten million dollars will be set aside for establishing, developing, and improving state parks and developing and improving existing state parks, and ninety million dollars will be set aside for constructing and improving highways, bridges and tunnels in the Commonwealth wherein there is to be federal cost participation?"

The measure passed in November 1960. [31]

General Obligation Bonds: Case Examples

Pennsylvania

The Farmland Preservation Program (FPP) in Pennsylvania was created in 1989 when voters approved a ten-year $100 million bond measure. The goal of this program is to protect the most productive agricultural lands that are under the highest degree of conversion pressure. Every county with approved farmland preservation guidelines receives some grant funding. Counties also apply for matching grant funds. There are also soil and agricultural use requirements. In 1994, the Legislature further increased funding by directing $0.02 per pack of the cigarette tax into FPP. Then in 1999 the Growing Green initiative was signed into law through the authorization of nearly $650 million in bond funds over five years. A portion of these funds went to FPP to preserve farmland. Growing Greener II, which passed in 2005, approved a statewide bond of $625 million, nearly half of which is dedicated to farmland and open space conservation. The bond is set to expire in 2011.

Maine

Maine has a long history of supporting bonds for land acquisition. The Land for Maine's Future program (LMF) began in 1987 and uses money through voter approved bond authorizations to acquire

[30] Personal communication with Kentucky Office of Financial Management
[31] Results available upon request as they are not in printable format.

land. In 1987 voter's authorized a $35 million bond. Then, in 1999 and 2005, voters approved two bond measures of an additional $50 million and $12 million respectively. In November 2007 voters approved another bond for $35 million, of which $17 million is designated for LMF. The program focuses on acquiring land for open space, wildlife, parks, natural areas, endangered species habitat, and natural communities. The LMF Program has successfully leveraged funds from other sources, including private and federal dollars and since its inception has assisted in the acquisition of more than 490,000 acres from willing sellers, including 247,000 acres protected through conservation easements. In 2010, voters again gave the program another funding infusion by approving a $9.75M bond with over 60 percent support.

The chart to the right is a list of all successful statewide conservation bond measures over the past 20 years. These measures enjoyed an 84 percent passage rate while generating nearly $12 billion in new conservation funding.

Statewide Voter-approved Conservation Bonds 1990-2010

State	Date	Conservation Funds Approved	%Yes
Alabama	Nov-98	$110,000,000	74%
California	Nov-96	$200,000,000	63%
California	Mar-00	$1,200,000,000	63%
California	Mar-00	$505,000,000	65%
California	Mar-02	$2,300,000,000	57%
California	Nov-02	$1,500,000,000	55%
California	Nov-06	$2,253,000,000	54%
California	Nov-06	$400,000,000	58%
California	Nov-06	$290,000,000	64%
Colorado	Nov-01	$115,000,000	58%
Maine	Nov-99	$50,000,000	69%
Maine	Nov-05	$12,000,000	65%
Maine	Nov-07	$17,000,000	63%
Maine	Nov-10	$9,750,000	59%
Michigan	Nov-98	$50,000,000	63%
Nevada	Nov-90	$47,200,000	66%
Nevada	Nov-02	$89,500,000	59%
New Jersey	Nov-92	$200,000,000	
New Jersey	Nov-95	$340,000,000	68%
New Jersey	Nov-03	$150,000,000	65%
New Jersey	Nov-07	$200,000,000	54%
New Jersey	Nov-09	$400,000,000	53%
New York	Nov-96	$150,000,000	57%
North Carolina	Nov-93	$20,000,000	57%
Ohio	Nov-93	$200,000,000	61%
Ohio	Nov-00	$400,000,000	57%
Ohio	Nov-08	$200,000,000	69%
Pennsylvania	Nov-93	$50,000,000	64%
Pennsylvania	May-05	$297,500,000	61%
Rhode Island	Nov-90	$2,000,000	63%
Rhode Island	Nov-96	$1,000,000	
Rhode Island	Nov-96	$4,000,000	57%
Rhode Island	Nov-98	$15,000,000	68%
Rhode Island	Nov-00	$34,000,000	73%
Rhode Island	Nov-02	$640,000	73%
Rhode Island	Nov-04	$59,000,000	71%
Rhode Island	Nov-08	$2,500,000	68%
Rhode Island	Nov-10	$13,200,000	65%
Virginia	Nov-92	$36,000,000	67%
Virginia	Nov-02	$36,500,000	69%

General Sales Tax -- Dedication or Increase

The general state sales tax has the ability to generate substantial funds for land conservation programs in Kentucky. In New Jersey, a voter approved Constitutional Amendment in 1998 dedicated $98 million in existing sales tax revenues annually for 30 years to the Garden State Preservation Trust, which supports land conservation, farmland protection, park improvements and historic preservation. In November 2008, following the economic downturn, Minnesota voters approved a Constitutional Amendment increasing their state sales tax by 3/8 cent to support new investments in parks, land conservation and cultural institutions. It will raise an estimated $6.9 billion over 25 years. Missouri and Arkansas have also both established 1/8-cent state sales taxes, and are widely acclaimed for these efforts to support funding for wildlife conservation. In November of 2010 Iowa voters overwhelmingly approved a trust fund for land conservation, which would be funded by a pending sales tax increase, currently being debated in the state legislature.

Kentucky has a statewide sales tax rate of 6 percent with no local sales and use tax. The sales tax is committed to the state General Fund. In fiscal year 2009 and 2010, the sales tax totals declined or were flat. For fiscal year 2011, there is hope that a slight increase in revenue may occur and current estimates have revenue nearing $3 billion,[32] but based on the current fiscal situation, any increase in the sales tax may be challenging.[33]

Kentucky Sales Tax Collections

Fiscal Year	Sales Tax Receipts	% Change
2009-2010	$2.79B	-2.4%
2008-2009	$2.86B	-0.7%
2007-2008	$2.88B	2.1%
2006-2007	$2.82B	2.5%

An increase of 0.125 percent above Kentucky's current 6 percent state sales tax (or a dedication of an existing 0.125 percent) would raise about $58.2 million annually (based on FY10 projections).[34] Over five years, at 0.125 percent it would raise $291 million and over a decade, $582 million. At an increase of 0.125 percent, the $58.2 million annual revenue could support the debt service on a $400 million revenue bond.

There are a number of significant challenges facing the use of the general sales tax for environmental protection. The first is getting approval from the state legislature, which would likely look to such a broad-based tax to fund other pressing needs, given the state's challenging fiscal situation. In addition, securing legislative support to "dedicate" funding in statute may be both challenging and illusory since there is no guarantee that the funds will be appropriated on an annual basis. There is no constitutional prohibition to dedicating sales tax revenue for land conservation.

There are two ways to amend the Kentucky Constitution:

A legislatively-referred constitutional amendment can be proposed in either house of the Kentucky General Assembly.

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32 The Fiscal Survey of States, Fall 2010, A Report by the National Governors Association and The National Association of State Budget Officers. Page 42

33 The Budget Director's April 11 memo states that sales tax revenues grew 5.3% in first 9 months of FY11. At this rate it would be about $61 million per year.

34 http://revenue.ky.gov/NR/rdonlyres/22D4F100-E6DD-43BB-A5E5-64C34813A237/0/AnnualReport20080922510.pdf

If 60 percent of the membership of each chamber approves, the proposed amendment goes on the ballot at the next general election during which members of the state legislature are up for election.

If a proposed amendment is approved by a simple majority of those voting on the question, it becomes part of the constitution.

The state legislature is not allowed to put more than four proposed amendments on any one ballot.

Proposed amendments "may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the Constitution as may be necessary and appropriate in order to accomplish the objectives of the amendment."

A constitutional convention can be called if:

A majority of all the members of each of the two chambers of the state legislature agree to place a question before the state's voters about whether to have a constitutional convention.

In the next session of the legislature, a majority of the members again agree to place this question before the state's voters.

A majority of those voting on the question say "yes" and if the number of voters voting "yes" is "equal to one-fourth of the number of qualified voters who voted at the last preceding general election".

Sales Tax Example: Minnesota's 3/8 cent tax

In 2008, Minnesota voters approved the Clean Water, Land and Legacy Amendment, the largest conservation ballot measure in history. The historic success of the Clean Water, Land and Legacy Amendment will increase investment in clean water, natural areas, cultural legacy, and parks and trails by about $290 million a year for 25 years (for a total of $5.5 billion). Approximately $220 million a year will go to protect and restore natural areas, parks, and lands vital for water quality. Voters passed the measure with 56 percent approval.

Sporting Goods Sales Tax: This funding mechanism has been successful in Texas and Virginia. The Kentucky State Legislature could dedicate the share of sales tax revenues that are estimated to come from the purchase of equipment associated with hunting, fishing and wildlife watching activities. Based on the figures obtained from the U.S. Fish and Wildlife Service, the sales of such equipment in Kentucky total approximately $456 million per year. Applying the 6 percent state sales tax rate would yield over $27 million in state taxes.[35] It should be noted that this revenue yield does not include the sale of equestrian related items. If Kentucky were to create a sporting goods sales tax these items should be included as they will likely add significant revenue to these estimates.

Revenue of over $27 million annually could support debt service on revenue bonds over $200 million according to the chart to the right.

Kentucky RevenueBond Financing Chart			
Assumes a 10-year bond issue at 5% Interest rate			
Bond Issue		Annual Debt Svce	
$	50,000,000	$	6,475,229
$	100,000,000	$	12,950,457
$	150,000,000	$	19,425,686
$	200,000,000	$	25,900,915

There have been limited situations in Kentucky where the legislature has earmarked sales tax funds for special projects, such as TIF (Tax Increment Financing) projects, KEIA (Kentucky Enterprise Initiative Act) construction project refunds, and motion picture production tax credits.[36]

Any budgetary matters must pass by majorities in both the House and Senate and be approved by the Governor.

Equipment included in these calculations according to the 2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation includes: [37]

Auxiliary equipment: Equipment owned primarily for wildlife-associated recreation. For the sportspersons section, these include sleeping bags, packs, duffel bags, tents, binoculars and field glasses, special fishing and hunting clothing, foul weather gear, boots and waders, maintenance and repair of equipment, and processing and taxidermy costs. For the wildlife- watching section, these include tents, tarps, frame packs, backpacking and other camping equipment, and blinds.

Fishing equipment: Items owned primarily for fishing: Rods, reels, poles, and rod-making components; Lines and leaders; Artificial lures, flies, baits, and dressing for flies or lines Hooks, sinkers, swivels, and other items attached to a line, except lures and baits; Tackle boxes Creels, stringers, fish bags, landing nets, and gaff hooks; Minnow traps, seines, and bait containers Depth finders, fish finders, and other electronic fishing devices; Ice fishing equipment; Other fishing equipment.

Hunting equipment: Items owned primarily for hunting: Rifles, shotguns, muzzleloaders, and handguns; Archery equipment Telescopic sights; Decoys and game calls; Ammunition Hand-loading equipment

[35] http://www.census.gov/prod/2008pubs/fhw06-ky.pdf
[36] (KSR 139.538)
[37] Methodology derived from Virginia's Sporting Goods Sales Tax, HB38

Wildlife-watching equipment: Items owned primarily for observing, photo- graphing, or feeding wildlife: Binoculars and spotting scopes; Cameras, video cameras, special lenses, and other photographic equipment; Film and developing ; Commercially prepared and pack- aged wild bird food; Other bulk food used to feed wild birds; Food for other wildlife; Nest boxes, bird houses, feeders, and baths; Day packs, carrying cases, and special clothing ; Other items such as field guides and maps

Again, considering that the horse industry produces a total economic impact valued at $471 million, the sale of horse-related equipment could be a significant source of revenue if included in a sporting goods sales tax. [38]

Sporting Goods Sales Tax Example: Virginia

Beginning on July 1, 2000, legislation passed by Virginia's General Assembly appropriated the State's 2 percent share of the sales tax revenue generated for hunting, fishing and wildlife watching as set forth in 2 categories (equipment and auxiliary equipment) into the Game Protection Fund. These classifications are based on the US Department of Interior, Fish and Wildlife Service and US Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting and Wildlife-Associated Recreation which comes out every 5 years. These 2 categories in the survey gained the Department of Game and Inland Fisheries $12.3 million in its first fiscal year. Since then, budgetary problems forced the legislature to raid the fund, which now stands at approximately $10 million each year. [39]

This legislation is a result of several years work by a bi-partisan committee of the legislature supported by a finding by the State Auditor of Public Accounts that the Department would run out of its ability to continue operations in 2001 and following, unless new revenue was available to support current operations. Further the legislation allowed its supervisory board to utilize up to 50 percent of the new funds for capital projects since the Department had no identifiable funds for capital projects and land acquisitions. [40]

Sporting Goods Sales Tax Example: Texas

In 1995, the Texas Parks and Wildlife Department (TPWD) asked the Legislature to replace a cigarette tax as a source of revenue with a portion of the state sales tax attributable to sporting goods. Beginning September 1, 1995, the Texas Legislature has appropriated an amount not to exceed $32 million per year from the revenue generated from the sale of sporting goods to fund the state park system and local grants program of the State Parks Division. In 2007, the legislature lifted the cap on the amount of sporting goods sales tax revenue allocated to parks. The legislature appropriated close to $33 million per year in sporting goods tax revenue for parks in both FY08 and FY09, which included close to $18 million for state parks and about $15.5 million for local parks. the latest estimates of total sporting goods sales tax generated is approximately $112 million in fiscal year 2009, yet TPWD's share from this source remains well below that amount, at about $45.8 million.

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[38] *Economic Impact of the Horse Industry on the United States*, April 2007, American Horse Council
39 Va. Code, 1950, as amended, Sec. 58.1 - 638 5.E).
40 Personal Communication with Ray Davis, Virginia Dept. of Game and Inland Fisheries.

Unmined Mineral Tax

In many instances in Kentucky the surface and mineral rights are severed and the surface and mineral right owners are different, therefore they are both taxed.[41] There are three major unmined mineral taxes, which include: gas, oil, and coal. The revenue produced goes predominantly towards the coal, oil and gas producing counties and local governments. Depending on the locality the revenue may be split between a variety of programs and funds. All revenues from the state portion go straight into the state general fund except for the tax on coal which goes towards land conservation through KHLCF.

KHLCF receives the state's entire portion of unmined mineral tax revenues from coal. Per statute, the first $400,000 of this revenue must be transferred from the Heritage Land program to the Fossils Fuel Fund in the state Department of Energy Development and Independence for coal education. Total annual revenue received from the tax on coal is generally around $2 million.[42]

Unmined Coal and "Other Unmined Minerals" (oil and gas) tax rates will always match the real estate property tax (state plus local), which in 2011 is 12.2 cents per $100 valuation for the state. On top of that, localities (counties, special districts) levy their own fee. [43]

Unmined Mineral Tax Revenues (State Portion)		
Mineral	**2010 Revenue***	**Recipient**
Coal	$ 2,059,201	KHLCF
Gas	$ 3,345,293	General Fund
Oil	$ 600,369	General Fund
	$ 6,004,863	
*Approx.		

Currently, only the revenue from coal is directed towards land conservation. The Legislature could direct the other two major unmined mineral taxes towards KHLCF and other conservation purposes providing an additional $4 million in land conservation revenue.

Unmined Mineral Tax revenue could be used to support revenue bond debt service as well.

[41] Some exceptions … for instance when an ag producer owns the surface and mineral rights, the rights have not be severed the farmer is exempted from paying the unmined mineral tax
[42] KRS 146.550 to 146.570
[43] Average real estate rate for counties is 26.82, and 21.83 for cities. So all together, for coal, oil, and gas, the rate is about 31 to 40 cents/$100 valuation..

Document Recording Fee

Deeds and Mortgage recording fees in Kentucky cost $17 for the first 3 pages, and $3 for every additional page. Of the total fee six dollars goes to the Affordable Housing Trust Fund (AHTF), established by the Kentucky State Legislature to provide housing for very low-income Kentuckians. Another four dollars goes towards a legal processing fee.

Other documents- for leins, easements, wills, etc, have different prices, but still pay out $6 to the AHTF. Deeds and Mortgages are the two most frequent documents filed, but all the others combined are a much larger category than either deeds or mortgages.

In 2010, about 870,000 documents were charged a recording fee in Kentucky. For each, the county clerk sent $6 of that fee to the Affordable Housing Trust Fund, which received about $5.22 million from this funding stream.[44] **Based on estimates for 2011, if an additional $3 recording fee for conservation was instituted the state may potentially receive around $2.5 million.**

Document Recording Fee Projections					
Year	Affordable Housing Trust Fund: revenue from $6 of every Document Recording Fee		All documents filed in KY	Potential Annual Revenue from additional $3 Recordng Fee for Conservation	
2007	$	3,563,499	593,917	$	1,781,750
2008	$	5,950,580	991,763	$	2,975,290
2009	$	5,222,339	870,390	$	2,611,170
2010	$	5,217,882	869,647	$	2,608,941
2011*	$	5,000,000	833,333	$	2,500,000
*numbers are projections					

Deed recording fee revenue could be used to support revenue bond debt service as well.

Affordable Housing Trust Fund

Established in 1992, and originally financed through lottery proceeds the AHTF began collecting money from the deed recording fee in 2006 when the legislature passed a $6 per document charge that has not changed since then. In 2006, Representatives Jim Wayne and Charlie Siler sponsored House Bill 338, creating a permanent funding source for AHTF by implementing a small increase in fees on new mortgages, recorded deeds, and 21 additional instruments recorded by county clerks. In FY 2010, they received $5.22 million in revenue from the deed recording fee.

Deed recording fees have been utilized in a few states (e.g. Massachusetts, Connecticut, and West Virginia) to provide a source of funding for land conservation (and related programs). A deed recording fee is levied when a document is recorded or discharged. Deeds and mortgages are the most commonly recorded documents.

[44] Personal communication with the Affordable Housing Trust Fund staff and local counties.

Document Recording Fee Examples

Community Investment Act (CIA) CONNECTICUT

The Community Investment Act (CIA), passed in 2005, requires a $30 fee for the recording of all documents on the municipal land records. This fee is distributed as follows: $1 to the municipal clerk for management and related costs; $3 to the municipality for local capital improvements projects fund; and the remaining $26 is distributed among four state agencies for specific purposes. These agencies are: The Department of Environmental Protection (DEP), The Department of Agriculture, The Commission on Culture and Tourism (CCT), and the Housing Finance Authority CHFA).

In June 2009, a new bill increased the filing fee for the recording of local land records from $30 to $40, with a portion of the increase going to fund a safety net program that will help state dairy farmers who are in financial distress.

The legislation changes the funding formula for money raised by $40 fee for recording municipal land documents to be used as grants under the Community Investment Account (CIA). Under the current CIA structure, the money is divided in four equal portions or 25 percent each to CCT for heritage preservation, CHFA for affordable housing, the DEP for municipal open space and the Department of Agriculture for farmland preservation.

The new bill would allot 20 percent each to the CCT, CHFA and DEP and use the remaining 40 percent for direct grants to dairy farmers to help them stay in business. This funding provision would sunset on July 1, 2011.

Land and Community Heritage Investment Program (LCHIP) NEW HAMPSHIRE

In 2007 two amendments secured $12 million in funding for LCHIP in the two-year budget cycle starting July 1 2007. The first budget year gets $6 million in general fund dollars. The second year is funded by a $25 deed recording fee on all documents recorded at the ten county deed registries or $6 million from the budget, whichever is less. The $25 deed recording fee will generate approximately $6 million annually. This fund starts to collect revenue on July 1, 2008 absent any change to the arrangement by the legislature. A study committee is appointed to determine whether any better alternative exists to the deed fee for a permanent dedicated fund. Finally, the LCHIP dedicated fund is set to sunset after 10 years, at which time the legislature would need to re-authorize the fund to extend it beyond the 10 year period for which it is created.

Each register of deeds retains 4 percent of the total surcharges collected as payment for the service of collecting the surcharge. All government recordings are exempt from the deed fee, and there is a $100 cap on the total fee that can be collected from each party to a real estate transaction taxable. The amendment also appropriates $50,000 to the NH Dept of Revenue Administration in FY 09 to assist county registrars with computer programming costs associated with collecting the deed fee. NOTE: Currently there is a bill in the legislature to repeal this new law.

Community Preservation Act (CPA) MASSACHUSETTS

The Community Preservation Act (CPA) was signed into law on September 14, 2000. The CPA allows communities to create a local Community Preservation Fund to raise money through a surcharge of up to 3 percent of a property tax levy for open space protection, historic preservation and the provision of affordable housing. The act also created a significant state matching fund using a deed recording fee, which serves as an incentive to communities to pass the CPA.

The fees of the registers of deeds and assistant recorders are paid when the instrument is left for recording, filing or deposit and is subject to a surcharge of $20. The fees for recording, filing or depositing a municipal lien certificate shall be subject to a surcharge of $10. The Massachusetts Department of Revenue may use up to 5 percent of the revenue for operating and administrative expenses.

To determine the exact distribution each community receives, DOR follows a formula in the CPA law that calls for up to three rounds of trust fund distributions. During the first six years of CPA (2002 through 2007), the trust fund provided a 100 percent match to local surcharge revenues on the first round. The match has fallen each year since then, due to an increase in CPA's popularity and a decrease in real estate activity. The first round yielded a 67.6 percent match in 2008, but fell to 34.8 percent in 2009, and 27.2 percent in 2010.

State – Federal Partnerships

Kentucky is participating in many of the federal land conservation grant programs; however, the state could be more aggressive in seeking additional funds from federal sources and making better use of current allocations. One such option is to use state drinking water revolving loan monies (DWSRF) to fund land acquisition. Also, states with well-funded conservation programs or sources of matching funds often receive a larger share of federal funding. For example, since 1996 USDA's conservation programs such as the Farm and Ranchland Protection Program and the Grasslands Reserve Program have awarded to Maryland $35.7 million; Pennsylvania $35.2 million; and Vermont $26 million. Kentucky has received $18 million.[45]

There are a number of federal programs that provide funding to state governments for land acquisition. Program descriptions and grant awards for select programs are described below:

Land and Water Conservation Fund (LWCF)
Department of the Interior (varies by agency)
http://www.nps.gov/ncrc/programs/lwcf/

Created in 1965, the Land and Water Conservation Fund (LWCF) is the largest source of federal money for park, wildlife, and open space land acquisition. Specifically, the LWCF provides funding to assist in the acquiring, preserving, developing and assuring accessibility to outdoor recreation resources, including but not limited to open space, parks, trails, wildlife lands and other lands and facilities desirable for individual active participation.[46] The program's funding comes primarily from offshore oil and gas drilling receipts, with an authorized expenditure of $900 million each year, while federal recreation fees, sales of federal surplus real property, and federal motorboat fuel taxes fund also contribute to the LWCF. Under this program, a portion of the money is intended to go to federal land purchases and a portion to the states as matching grants for land protection projects.

LWCF – Federal
Department of the Interior
The federal side of the Land and Water Conservation Fund provides funding for federal agencies (U.S. Fish and Wildlife Service, U.S. Forest Service, National Park Service, and the Bureau of Land Management) to add land to existing recreation areas, parks, forests, refuges and other federal units. LWCF funding provides the bulk of the money available for this purpose and is typically provided through the annual federal appropriations process, with Congress making the determination of what federal land units will receive LWCF funding each year.

Funding levels for federal land acquisitions are determined by Congress or the relevant federal agency and are related to the property's value. Between 1965 and 2009, Kentucky received $58.8 million from the federal portion of the LWCF, ranking 38th in total federal agency support.

LWCF--Stateside
National Park Service
The stateside LWCF program provides a 50 percent match to states for planning, developing and acquiring land and water areas for natural resource protection and recreation enhancement.

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[45] American Farmland Trust, 2009 Texas Land Trends Study AND TPL's Conservation Almanac
[46] <http://www.iac.wa.gov/iac/grants/lwcf.htm>.

Funds are distributed to states based on population and need. Once the funds are distributed to the states, it is up to each state to choose the projects, though the National Park Service has final approval. Eligible grant recipients include municipal subdivisions, state agencies and tribal governments, each of whom must provide at least 50 percent matching funds in either cash or in-kind contributions and a detailed plan for the proposed project. Grant applications are evaluated based on the technical merits of the project, the public/private partnerships, and how the project addresses the identified needs and priorities of a statewide comprehensive plan.

Annual appropriations to the fund have ranged from a high of $369 million in 1979 to four years of zero funding between 1996 and 1999. In FY 2007 and FY 2008, $27.9 million and $25 million was provided for stateside grants in each year respectively. In FY 2009 the appropriated amount was $19 million.

Between 1965 and 2009, Kentucky received $58.8 million from the state grant portion of the LWCF. Between 1998 and 2008, Kentucky received approximately $876,000 from the stateside grants.

Farm and Ranch Lands Protection Program (FRPP)
USDA Natural Resources Conservation Service
http://www.nrcs.usda.gov/programs/frpp/

Congress originally authorized the USDA Farmland Protection Program in 1996 as a means of protecting the nation's prime agricultural land from being lost to development. The recently approved 2008 Farm Bill authorizes the program for another five years and doubles the current funding level for the program, to over $1 billion over that five year period.

Generally, the program provides matching funds to assist in the purchase of development rights to keep productive farm and ranchland in agricultural uses and works with state, tribal, or local governments and non-governmental entities. Grants are awarded by the Natural Resource Conservation Service (NRCS) to states, local governments and non-governmental entities on a competitive basis, according to national and state criteria and require up to a 50 per cent non-NRCS match to cover the cost of the easement. Up to 25 percent of donated land value can be counted as the match.

NRCS Grassland Reserve Program (GRP)
Department of Agriculture (USDA)
http://www.nrcs.usda.gov/PROGRAMS/GRP/

The Grassland Reserve Program (GRP) is a voluntary conservation program that emphasizes support for working grazing operations, enhancement of plant and animal biodiversity, and protection of grassland under threat of conversion to other uses. Participants voluntarily limit future development and cropping uses of the land while retaining the right to conduct common grazing practices and operations related to the production of forage and seeding, subject to certain restrictions during nesting seasons of bird species that are in significant decline or are protected under Federal or State law. A grazing management plan is required for participants. Current data gaps do not allow for the separation of permanent and temporary easements in the table provided above.

Forest Legacy Program (FLP)
US Forest Service (USFS)
www.fs.fed.us/spf/coop/programs/loa/aboutflp.shtml
http://www.dnr.wa.gov/htdocs/amp/forest_legacy/final102504/

The Forest Legacy Program was established in 1990 to provide federal funding to states to assist in securing conservation easements on forestlands threatened with conversion to nonforest uses. Fee transactions are also used under the program, either for the whole transaction or combined with easements to achieve a state's highest conservation goals. A state voluntarily enters the program by submitting an Assessment of Need (AON) to the Secretary of Agriculture for approval. These plans establish the lead state agency, the state's criteria for Forest Legacy projects, and Forest Legacy areas within which proposed Legacy projects must be located. Once the AON is approved, the state lead agency can submit up to three grant applications each year for projects within the FLAs. The federal government may fund up to 75 percent of project costs, with at least 25 percent coming from private, state, or local sources.

In FY 2009, the Forest Legacy Program was funded at $57.5 million, providing grants to states for 24 forest conservation projects and providing start-up funds for 3 new states. Between 2000 and 2007, Kentucky has received about $4.4 million in FLP funds for the protection of forestlands.

Federal Dollars Spent 1998 - 2008

Grant Program	Acres	Dollars
North American Wetland Conservation Act	3,050	$1.8 Million
Land and Water Conservation Finance, Stateside	8,654	$876,195
Farm and Ranch Lands Protection Program	22,675	$16 Million
Grassland Reserve Program	1,933	$2.1 Million
Forest Legacy Program*	2,661	$4.4 Million
Land Management Agency		
National Park Service	590	$181,116
U.S. Forest Service	14,407	$9.28 Million
U.S. Fish and Wildlife Service	8,315	$8.8 Million
Total	**62,285**	**$44.5 Million**
*Data through 2007		

Examples of Successful Statewide Coalitions to Sustain Land Conservation Funding

WWRC – Washington Wildlife and Recreation Coalition

For 20 years, WWRC has been an effective lobbying coalition in support of the state's Washington Wildlife and Recreation Program. It is a standing coalition of roughly a half dozen staff that recruits and maintains a coalition of more than 130 organizational members. Its board members hail from conservation groups, local government, environmental advocacy groups, sportsman's groups, real estate, the tourism industry, Fortune 100 companies, the forest products industry and more. WWRC monitors the legislative process, engages key stakeholders, organizes lobby days, and communicates with media members. It has been successful at sustaining reliable biennial appropriations for two decades and in recent years, WWRP appropriations have doubled to $100 million per biennium.

North Carolina Land for Tomorrow Coalition

North Carolina provides funding for a range of land conservation and parks programs through a variety of "trust funds" that are subject to annual appropriation. The Land for Tomorrow Coalition is a statewide partnership of concerned citizens, businesses, interest groups and local governments urging the General Assembly to fully fund the state's conservation trust funds. The LFT includes more than 200 organizational partners that have signed a resolution encouraging the state of North Carolina to increase its investments in land conservation. Foundations and individuals have supported LFT, with several dozen supporters giving over $10,000 each (including a half dozen above $50,000).

LFT does not have full time staff, but rather has an 8-member steering committee (representing 8 organizations) that supports the coalition's efforts. LFT organizes lobby days, tracks legislation, sends out action alerts (using Facebook and email alerts), commissions polls and publishes an annual "Green Book" detailing where state conservation funds have been spent by county. In 2010, LFT held an online contest to build awareness about the importance of investing in conservation. More than 3,000 people voted for their top spots from a list of 25 finalists, which were narrowed down by an expert panel from 200 nominated areas.

Conclusion

Most agencies rely on funding from the Kentucky Heritage Land Conservation Fund and because revenue for this fund varies from year to year and does not produce substantial amounts, Kentucky has fallen behind its neighbors in state investments for land conservation. With current funding streams, Kentucky is not able to buy large tracts of land from increasingly willing sellers.

Analysis indicates that the Kentucky State Legislature has several primary options to consider that have the greatest potential to substantially increase state conservation funding and provide long-term stability. These options include issuing a general obligation bond through voter approval, dedicating an increase of the sales tax, as recommended by the state Task Force, or dedicating a portion of existing sales tax or sporting goods sales tax for land conservation.

Additionally, this report identifies several smaller sources of revenue mechanisms that can be considered in Kentucky. These include the dedication of unmined mineral taxes for oil and natural gas as well as the dedication of a deed recording fee. Appendix A offers a matrix that is useful when comparing each of these mechanisms.

Before making any clear recommendations, The Trust for Public Land advises that the conservation community conduct a public opinion survey to gauge voter support for the funding mechanisms outlined here and priorities for program spending. The information on funding levels provided above should be utilized in developing survey questions.

APPENDICES

Appendix A: Kentucky Revenue Options Matrix

Revenue Option	Description	Implementation Process	Comments
Issuing G.O. Bonds	The Legislature could issue self-supporting bonds for land conservation. A $30 million bond would have a small impact on the state's annual debt service capacity as they currently have no outstanding general obligation debt. State officials, its financial advisors, bond counsel and underwriters would establish the actual terms of any bond issue.	The General Assembly would have to pass a measure to place the capital item on the ballot, which would also identify the revenue stream that would be pledged to the repayment of the obligation. The measure would require a 3/5ths majority of each chamber in order to be placed on the ballot and a simple majority of the voters to pass	<u>Revenue raising capacity</u>: Would create a significant funding source for land conservation acquisition and capital improvements, thus enabling the state to make important acquisitions now while land is available. Payments would be spread out over a long time horizon, and therefore costs borne by both current and future beneficiaries. Bond proceeds may not be used for maintenance and operations. <u>Precedent for using funding source for land conservation</u>: This revenue source has been used successfully by local and state governments throughout the country to raise billions for land conservation
Dedication or Increase of General Sales Tax	<u>*2011 Revenue Potential*</u> $58m The revenue could support debt service on a revenue bond issue of $400M The Legislature could propose to increase the current sales tax and allocate this portion of the revenue to land conservation. To dedicate funding a constitutional amendment could be pursued.	To increase and allocate a portion of the sales tax requires majority approval by both houses of the legislature. A legislatively-referred constitutional amendment can be proposed. If 60 percent of the membership of each chamber approves, the proposed amendment goes on the ballot at the next general election during which members of the state legislature are up for election.	<u>Revenue raising capacity</u>: Would create a significant funding source for parks maintenance, conservation acquisition and capital improvements. <u>Reliability</u>: Sales tax revenues can fluctuate significantly with changing economic conditions, but generally revenues from this source are growing. <u>Competition</u>: Changing existing revenue allocations would result in a small funding gap in the state general fund. <u>Precedent for using funding source for parks</u>: Revenues from this source have been used in other states.

Dedicating the Sporting Goods Sales Tax	*2011 Revenue Potential* $27m The revenue could support debt service on a revenue bond issue of $200M The Legislature could propose to dedicate 100% of all revenues from sales of sporting goods towards land conservation	Requires a majority approval by both houses of the legislature	Revenue raising capacity: Would create a significant funding source for operations and maintenance, conservation acquisition and capital improvements. Reliability: Sales tax revenues can fluctuate significantly with changing economic conditions, but generally revenues from this source are growing. Competition: Changing existing revenue allocations would result in a small funding gap in the state general fund. Precedent for using funding source for parks: Revenues from this source have been used in other states.
Unmined mineral taxes for oil and natural gas	A case could be made to re-assign the other two major unmined mineral tax state revenues on oil and natural gas to fund land conservation. The unmined tax on coal already is used for land conservation by the Commonwealth	Requires a majority approval by both houses of the legislature	Revenue raising capacity: Would create a small funding source for land conservation and could be used for acquisition as well as development and maintenance purposes. Competition: Changing existing revenue allocations would result in a small funding gap in the state general fund. Precedent for using funding source for parks and conservation: The unmined mineral tax revenue from coal already is dedicated to KLCHF
Document Recording Fee	A deed recording fee is levied when a document is recorded or discharged. Deeds and mortgages are the most commonly recorded documents. Imposing a fee of $3 / document, in Kentucky could raise approximately $2.5 million annually.	Statutory amendment by Legislature.	Revenue raising capacity: Could generate significant sums for land conservation. Could support both acquisition and maintenance costs. Reliability: Tax revenues can fluctuate significantly with changing economic conditions. Nexus between funding source and land conservation: A tax upon real property transfer ties in to the need to conserve lands. Precedent: There are a number of states using this source for land conservation.

For any questions or more information please contact:

Tom Gilbert

Regional Conservation Services Director
The Trust for Public Land
5 Spruce Farm
741 Grenoble Rd.
Jamison, PA 18929
tom.gilbert@tpl.org
Phone: 215-343-1110
215-343-3230 (fax)

Andrew du Moulin

Director, Center for Conservation Finance Research
The Trust for Public Land
Conservation Finance Program
33 Union Street, 5th Floor
Boston, MA 02108
andrew.dumoulin@tpl.org
phone: 617-371-0557

Mary Bruce Alford

Senior Research Associate
The Trust for Public Land
MaryBruce.Alford@tpl.org
(601) 665-4672