

Assessment of the Right-of-Way Acquisition Loan Fund and Recommendations

Executive Summary

Findings

In 2011 the Council suspended its 30-year old Right-of-Way Acquisition Loan Fund (RALF) program to evaluate its effectiveness and determine what changes, if any, should be made in the program. Potential options included continuing the program as it currently operates or restructuring it to reflect changes in demand for loans, funding levels, and current plans and programs for highway expansions and improvements.

An analysis of the financial effectiveness of the program and input from a group of RALF stakeholders have demonstrated that the RALF program has been beneficial for both MnDOT and the communities by assisting in highway program delivery in a cost-effective manner.

Recommendations

That the RALF program be reinstated with the following program modifications:

1. The Council will consider and exercise approval over individual RALF loan requests, doing so on a case-by-case basis to ensure consistency with the Transportation Policy Plan and to determine policy and priority implications.
2. RALF loan requests should be limited to rights-of-way threatened by development or to hardship acquisitions.
3. The Transportation Committee will receive an annual staff review of the RALF program that assesses its status, anticipates financial needs, recommends a levy amount for the next annual budget, and addresses related matters.

In addition:

4. Legislative changes should not be pursued to expand the existing RALF program to include "A" Minor Arterials and other county roads that are not trunk highways or principal arterials.
5. The Council should further investigate the feasibility of restructuring the RALF program to include early acquisition of right-of-way for transit projects and/or transit-oriented development (TOD) parcels.
6. The Council will work with MnDOT to establish priorities for interchange projects and will subsequently provide guidance on the use of RALF funding.

7. The guidelines and process for the RALF program will be reviewed, modified and updated to reflect the adopted program changes.

Background

Purpose of the RALF Program

The state legislature authorized the RALF program in 1982, allowing the Metropolitan Council to levy a regional property tax to be used for advanced acquisition of certain highway rights-of-way. (Text of statute in Attachment 1, Minn. Stat. 473.167.) At that time, there were several metropolitan highways planned for new alignments, such as TH 169 (known as the “Shakopee Bypass”), TH 212 west of I-494 and TH 610.

Because MnDOT is prohibited under state law from purchasing right-of-way until shortly before actual highway construction is programmed, many cities and townships adopted official maps, under Minn. Stat. 394.361 and 462.359, to preserve the right-of-way for these potential future controlled-access highways. However, if a building permit is requested for a property within the officially mapped right-of-way, the city must issue the permit or purchase the property.

The original intent of the RALF law was to make funds available to municipalities (counties, cities and townships) to purchase these officially mapped rights-of-way before parcels are developed. Over the years, the legislature broadened the program to allow purchase of other properties before their value escalates. The goal has been to save money, over the long-term, through early acquisition of these parcels.

In addition to preserving right-of-way for future highway projects, there are qualitative benefits of early acquisition of right-of-way parcels through the RALF program. It offers an option to owners who need to sell but cannot find a buyer because their property is located in a proposed highway corridor (hardship situation). It also takes advantage of willing-seller opportunities, avoiding a potentially adversarial and expensive condemnation process.

Use of RALF Funds

The funds from the RALF program are used by the Council to make loans to municipalities to acquire developed and undeveloped parcels of right-of-way for initial construction or expansion of officially mapped state trunk highways or other principal arterials. Loans include the price of the parcel and any costs incurred by the city to acquire the parcels. Relocation benefits are payable only to homeowners for hardship acquisitions.

Loans are made on a first-come-first-served basis to municipalities, which are then used to purchase property from willing sellers. The transactions occur independently of the actual acquisition and construction schedules developed by the constructing agency. The municipalities hold title to the property until the highway-constructing authority, typically MnDOT, acquires the right-of-way at the original purchase price before starting construction. Proceeds from the sale of the parcels to

MnDOT are then repaid by the city to the RALF fund, increasing the fund balance available for new loans.

Loan Guidelines and Review Process

Although the law is fairly specific regarding loan eligibility, the Council has adopted guidelines and a process for considering loan applications and granting loan approval. Initially, each RALF loan request was reviewed for consistency with the eligibility requirements and procedures and then approved by the Council.

In 1995, revisions to the Council's grant and loan policy directed loan managers to prepare an annual RALF Program Plan that summarized the previous year's loan activity and a plan for the subsequent year's expected activity, including a list of eligible highway segments. The Council's annual adoption of this plan allowed staff to process and execute RALF loan requests for any highway projects contained in the Program Plan if all loan eligibility guidelines were met, eliminating the need for formal Council approval of individual RALF loan requests.

Revenue for RALF

The RALF loan fund has two sources of revenue – repaid loans and a property tax levied by the Council in accordance with provisions in Minn. Stat. 473.167 (Attachment 1). Although the statutory levy formula has varied over the years, the current statute set a maximum of \$2,828,379 for taxes payable in 2005, with a multiplier formula for subsequent years. The actual levy certified by the Council each year depends on the demand for loans and the amount of funds that are available for new loans, including any loan repayments anticipated.

Between 2010 and 2012, the annual RALF levy generated about \$3.6 million. Over the entire life of the program, the annual RALF levies have yielded nearly \$58 million, providing more than 15 municipalities with over \$67 million in loans for advanced property acquisitions, when loan repayments are included. (Annual RALF levies are shown in Attachment 2.)

Repaid and Outstanding Loans

Of the 113 loans issued, 55 loans, totaling \$21 million, have been repaid. The current balance of outstanding loans is approximately \$46 million and the current balance available to lend is approximately \$8 million. (See Attachment 3 for schedule of all loan activity.)

The majority of the loans repaid to date were originally made to acquire right-of-way parcels for several large-scale trunk highway projects: TH 212 (Eden Prairie, Chanhassen and Chaska), TH 610 (Brooklyn Park and Maple Grove), and TH 169 (Shakopee). Outstanding loans remain with the cities of Anoka, Belle Plaine, Blaine, Bloomington, Chaska, Lakeville, Maple Grove, Ramsey, Richfield, Shoreview and Anoka County. With the exception of Maple Grove's loans for TH 610, none of these outstanding loans are expected to be repaid in the near future.

In some cases, this is because parcels were acquired for major expansion projects--such as TH 10 in the cities of Ramsey and Anoka--that have never been in the Council's Transportation Policy Plan,

and for other major expansion projects, such as I-35W in Bloomington and I-494 in Richfield, that have been removed from the plan or redesigned. In other cases, the projects are long term and awaiting funding to proceed. For example, TH 610 will have a repayment period of 20 years or more because some parcels were acquired in the 1980s, and the final extension to I-94 remains to be completed.

RALF Program Assessment

In June 2010, the Council suspended the RALF program so it could evaluate the program's financial efficiency over the past 30 years, determine its future viability and make recommendations for continued management of the program.

RALF Task Force

To assist with the evaluation, a RALF Assessment Task Force – composed of a cross section of Council, MnDOT, county and city stakeholders with past involvement in the RALF program – met twice to discuss the program's structure, implementation and results, as well as suggest potential program changes.

The consensus of the Task Force was that the RALF program has been extremely beneficial for both MnDOT and the communities by expediting highway program delivery and that it should continue but may need some fine-tuning. The Task Force also suggested that a financial consultant be hired to examine whether the program did in fact save money through early acquisition.

Financial Evaluation Findings

The consulting firm ProSource Technologies, LLC, was hired to determine if advanced acquisition of highway rights-of-way through the RALF revolving loan fund had saved money over time. The ProSource report (Attachment 4) contains four major findings regarding the value of the program:

1. Repaid RALF loans show a net savings of nearly \$17 million. Parcels purchased between the 1980s and early 1990s and since repaid have shown the largest savings due to the appreciation in value of metro area real estate during those years.
2. Outstanding RALF loans currently show a loss in value of \$10.7 million, due to the decline in the real estate market since 2007. It will not be evident whether or not the early acquisition of these properties saved money until the value of the property at the time the loans are repaid is known.
3. The location of the highway project and the likelihood of near-term development or redevelopment near right-of-way (“transitional land”) can make a significant difference in the amount of savings realized through advanced right-of-way acquisition. Identifying these locations in coordination with local city or county planning departments can help target RALF acquisitions for optimum benefit. Wherever possible, undeveloped right-of-way, or right-of-way that is likely to be redeveloped, should be a priority for acquisition.

4. Although there was a net gain of about \$17 million through the RALF program, it should be acknowledged that properties purchased with RALF loans become tax exempt. Consequently, the overall \$17 million in savings accrued to MnDOT is partially offset by calculated revenue that was potentially foregone by the cities, estimated to be \$4.34 million.

Program Assessment

While the ProSource study focused on an evaluation of the financial efficacy of the RALF program, other questions related to the program were raised by Task Force members and others.

1. Should RALF loans be made only to advance improvements that are consistent with the regional Transportation Policy Plan (TPP)?

The statute allows RALF loans for any state trunk highway (as well as county-owned principal arterials) regardless of the highway improvement priorities identified in the region's long-range TPP. For the program's first 20 years or so, loan requests were primarily for right-of-way within major new highway corridors such as TH 169, TH 212, TH 610, all of which were in the TPP. Now that TH 169 and TH 212 have been completed, along with much of TH 610, current RALF loans are often made for property needed to expand or improve existing roads and interchanges.

In addition, a number of major highway expansion projects formerly in the fiscally-constrained programming within the TPP are no longer included in the plan, such as I-35W in Bloomington and I-494 in Richfield. In light of the very high cost of those projects, existing funding levels and reasonable potential funding increases, those projects have been reassessed resulting in smaller scale projects now included in the unfunded vision of the TPP. Limited funds are expected to be available for future highway expansion

Other recent RALF loans were for projects that were identified through various corridor or feasibility studies but have never been specifically identified as regional priorities in the TPP, such as TH 10 in Ramsey and Anoka and several interchange improvements throughout the metro area.

Although interchange projects are not specifically identified in the TPP, RALF loans may be used to acquire eligible right-of-way parcels needed to expand and/or reconstruct existing interchanges, to add an interchange to an existing freeway, or to convert intersections to interchanges. These acquisitions are eligible for RALF funding because they involve a trunk highway. The Council will work with MnDOT to establish priorities for interchange projects and will subsequently provide guidance on the use of RALF funding.

RALF loan requests should be more consistent with or supportive of the TPP, even though a request may be eligible for a loan because the parcel lies within an officially mapped state trunk highway. Consistency between RALF acquisitions and the specific project priorities of the region's long-range Transportation Policy Plan would help ensure that the RALF program supports agreed-upon priorities that benefit the region.

Limiting RALF loans only to projects identified in the TPP, both the fiscally constrained plan and the unfunded vision components, rather than awarding them to any eligible parcel under the statute would also increase the likelihood that the loans would be repaid within a foreseeable time period, allowing the funds to revolve to new loans. Except for the extension of TH 610, the current TPP does not identify any major highway projects that are likely to need additional right-of-way on new alignment.

Since some RALF loan requests could be more consistent with or supportive of the TPP than others, reviewing each loan request individually would enable the Council to make that determination.

2. Should quantitative and qualitative criteria for evaluating loan requests be developed?

Prioritizing RALF loan applications is difficult because the timing and number of the requests is often based on reacting to proposed development or the hardship needs of the property owner and the particular property. Task Force members suggested developing, at a minimum, “qualifying” criteria, such as whether or not the project is included in a local comprehensive plan, an environmental assessment has been approved for the project, a layout has been developed, evidence of local commitment to the project exists, and whether the land is vacant/underutilized or “developed.” If it appears that available funding will be inadequate, Council staff will make a prioritization recommendation.

One Task Force member suggested that the designation of a road in the comprehensive plan and preliminary design work should be adequate for determining right-of-way needs and that the requirement that the right-of-way must be designated on an official map should be eliminated because it is difficult, time-consuming and causes inflation of land values.

However, the requirement that the right-of-way be officially mapped is defined in the statute: “The Council may make loans to counties, towns, and statutory and home rule charter cities within the metropolitan area for the purchase of property within the right-of-way of a state trunk highway shown on an official map adopted pursuant to section 394.361 or 462.359 or for the purchase of property within the proposed right-of-way of a principal or intermediate arterial highway designated by the Council as a part of the metropolitan highway system pursuant to section 473.166.” This section requires that the Council give “controlled access approval” of a highway project, which provides an optional path for those seeking RALF loans who do not wish to do an official map.

Official mapping is needed to define the right-of-way limits of the highway. It also demonstrates city support and local awareness of a future project. None of the RALF loan recipients to date have objected to the official mapping requirement, and eliminating the official map language would require a change in the state statute.

3. Should advanced acquisition be limited to parcels demonstrably threatened by development (returning to the original statutory language) and hardship situations?

Because eminent domain is not allowed as part of the RALF acquisition process, RALF is able to capitalize only on willing-seller-willing-buyer opportunities, benefitting both property owners and municipalities. In the early years of the RALF program, the loan applicants had to show that the property needed for future highway construction was threatened by development. This limited acquisitions to undeveloped land or to hardship situations (homesteaded properties).

Owners of undeveloped land had to show that development proposals had been approved that would convert the land to other uses. Homeowners were required to show that they were unable to sell their homes because of the planned highway project. The hardship provision of the law allows for relocation benefits for the homeowners but not for non-residential properties.

In the mid-1990s, the RALF statute was amended to “take advantage of open market opportunities when developed properties become available for sale, provided all parties involved are agreeable to the sale and funds are available.” This expansion of the law allowed acquisition of essentially any property within the officially mapped corridor, and since then it has allowed the acquisition of some developed commercial properties, even though relocation benefits were not funded through RALF.

The greatest financial benefits of RALF derive from acquiring properties that are at risk of being developed. The use of RALF funds should be protected for priority needs and avoid being used to provide local benefits, such as reduced access and safety improvements, that fall outside the core purpose of the RALF program.

4. Are the city’s “stewardship” costs (for example, rent and maintenance) of owning a RALF parcel manageable?

The consensus of the Task Force members with experience in overseeing RALF properties is that the costs are manageable and there is sufficient leeway allowed by the Council in managing the properties. A few cities have raised the question about the tax revenue forgone by converting the city-purchased land to tax-exempt status. However, this does not seem to be a major issue because the future road’s benefit to the city outweighs that consideration. Municipalities should consider both property management and tax-exempt status impacts prior to requesting a parcel be acquired through the RALF program.

5. How and when should loans be repaid if the acquired property is no longer needed for highway purposes? What triggers a sell-off of acquired parcels and who makes the decision?

According to the RALF law, “upon notification by the Council that the plan to construct the highway has been abandoned or the anticipated location of the highway changed, the property is to be sold at market value. . .” The law provides that the Council will make the decision to do so after consulting with MnDOT and the local entity.

In the history of the RALF program only one parcel has been sold because “the anticipated location of the highway changed.” After a change in the design for reconstructing the interchange at I-494 and Valley Creek Road in Woodbury, a small parcel on the south side of Valley Creek Road was not needed and was sold after construction of the interchange.

Such situations are rare, and it is often not as obvious whether a property should continue to be held or not. However, proper management of the RALF program calls for periodic review of outstanding loans to determine whether any properties previously acquired should be sold and the RALF account reimbursed. For instance, the design for reconstructing the I-494/I-35W interchange is currently being re-examined, and it is possible that parcels acquired within the I-494/I-35W interchange area in Bloomington for the previous design may no longer be needed. While the decision to “abandon or change the anticipated highway location” rests with MnDOT, according to the law the Council would make the determination whether the land should be sold after consultation with MnDOT. Actual disposition of the property and repayment of the loans would occur in accordance with the loan agreement between the Council and the city.

6. Should the annual RALF levy amount be increased?

Several Task Force members asked if the Council could increase the RALF levy. The question was not based on any estimated additional needs but on the concern that, absent any major loan paybacks, just one or two of the most recent loan requests to complete TH 610 could exceed the available balance of the RALF program, thus limiting the number of loans that could be made in a given year.

The maximum amount that the Council may levy in a year for the RALF loan program is set by state statute. In setting the RALF levy each year, the Council considers the demand for loans, the available balance in the RALF fund, and the RALF levy amount in the context of the Council’s total levy for all purposes. During the RALF program’s history, there have been six years when the Council did not levy at all for the RALF fund and several years when it levied for less than the maximum amount. These were years in which the available fund balance exceeded its limitations because of sizeable loan repayments and/or fewer-than-expected loan requests.

Due to the “willing seller” nature of the program, it is very difficult to anticipate the timing, number and dollar amount of future loan requests. Consequently, loan requests have always been considered on a first-come-first-served basis. Since inception of the program, no loan request has ever been denied or delayed due to lack of funds. It is possible that a single loan request could deplete the available balance of the fund, in which case other requests would be delayed until the fund was either replenished with new levies or outstanding loans are repaid.

At this time, the only expected repayment with a likely date will occur with the completion of TH 610 by the year 2020. There are no expected repayment dates for the remaining loans. However, unless the RALF program is expanded, there is no compelling reason for an increase in the Council’s levy amount at this time.

7. Should the loan program be expanded beyond trunk highways and principal arterials to include acquisition of rights-of-way for other county roads?

Under the current law, RALF loans can be made only for acquisition of approved principal arterials (which may be under state or county jurisdiction) or state trunk highways (which are often principal arterials but may be “A” minor arterials).

Many of the counties have plans for expanding their “A” minor arterial road networks and have identified potential right-of-way needs for these roads. Some Task Force members suggested expanding the RALF program to acquire right-of-way needed for “A” minor arterials which are not trunk highways. This expansion of the loan program would require a change to the RALF statute.

Because the principal arterial system is now virtually complete in the near term, the need to preserve right-of-way for future highways is greatly reduced from what it was in the early 1980s. However, there are some county roads, such as CR 17 and CR 42 in Scott County and CR 22 in Anoka County, that have been identified as potential principal arterials but are not currently shown as principal arterials in the TPP. Addition of these future county principal arterials on the metropolitan highway system would make them eligible for RALF loans under the existing statute. While potential principal arterials in the developing areas will be eligible to use the RALF program, the needs and timing will be dependent on long-term regional growth forecasts.

Unlike trunk highways and principal arterials, the Council has no planning authority with county roads. While it could be argued that acquisition of right-of-way for “A” Minor Arterials, a functional classification which supports the Principal Arterials, would be consistent with the TPP, it could significantly expand the demand for the program. The mileage of “A” minor arterials is significantly larger than that of the principal arterial system and the need for new rights-of-way are much greater.

Because MnDOT is not able to buy right-of-way before a highway project is actually programmed, the RALF law enables municipalities to purchase the right-of-way on MnDOT’s behalf. In constructing their roads, the counties do not face this restriction and could purchase right-of-way whenever they choose or can do so. Given that the county is the owner of the road including the right-of-way and ultimately responsible for funding the project, the county would, in the end, pay itself to in turn repay the Council. It is unclear when or how the county would pay back such a loan. The Council would essentially be giving the county a regional loan for its own project. Therefore, the benefits of a Council RALF loan for roads owned by the counties are uncertain. A legislative change would also be necessary for county-owned roads to use RALF.

Rather than involving the Council in a project to be owned and funded by a county and using a regional funding source for a local project, the ProSource report provides justification for counties to promote advance ROW acquisition for their own projects with their own funding.

8. Should the loan program be expanded beyond trunk highways and principal arterials to include acquisition of transit right-of-way?

It was suggested that the RALF statute be changed to allow for acquisition of parcels needed for transit projects, such as park-and-ride sites, arterial bus corridors, and possibly transitways, although most planned transitways are proposed within public roads or existing rail rights-of-way that are owned by Regional Railroad Authorities.

The Federal Transit Administration does not allow purchase of transit right-of-way in advance of a completed environmental impact statement. The concern is that advanced property acquisition could prejudice the process established by the National Environmental Policy Act (NEPA). The Council adheres to this policy and does not enter into property acquisition or property negotiations until completion of the applicable federal environmental process. Similarly, adequate completion of the environmental process is necessary for parcels acquired for highway projects with FHWA oversight.

The Council should analyze the potential demand for transit right-of-way. The analysis should consider other existing revenue sources for purchasing transitway right-of-way, including the county Regional Railroad Authorities, which have used property taxing authority to acquire many rail corridors for transit purposes over the last few decades. Because these costs have not been reimbursed or considered a project cost from the federal perspective, this approach has benefited the region's projects in being more cost-competitive in the New Starts program. The more recently established sales tax receipts distributed by the Counties Transit Improvement Board is another funding source that could be used for advanced acquisition. As part of analysis, the Council could determine which past transit acquisitions could have used a program similar to RALF.

Because the Council would typically be the ultimate land owner, the process for determining loan applicant and repayment would need to be developed. Consultation with the FTA would also be important given the Council's dual role as advance purchaser and ultimate owner.

Expansion of the RALF program or creation of a separate program for transit would require legislative action, and it should be further investigated for needs and feasibility before legislation is pursued.

9. Should the loan program be expanded beyond trunk highways and principal arterials to include acquisition of transit-oriented development (TOD) parcels?

Potential owners of TOD parcels include developers and public entities such as cities, counties and the Council. The ownership arrangement can include public ownership with a long-term lease to a private or public user. The timing and funding sources for TOD projects can be significantly more complicated than for a transportation project in addition to the variability in project scopes and evaluating the need and benefit.

The Council is currently developing its Regional TOD Strategy to determine its role in advancing TOD in the metro area. Council TOD policies will be developed to facilitate implementing the strategies; modifying the RALF program for TOD should be considered by Council within the larger context of its TOD strategies and policies. The Council could also consider other new or existing funding sources for advance TOD parcel acquisition. For example, the Council's Livable Communities Act (LCA) TOD program already allows grant fund funds to be used for land acquisition to be held for future development. However, LCA funding to support TOD is limited at this time. Regardless of any specific approach, legislative action will be required to modify the existing program or create a new RALF-like program for TOD.

Recommendations

That the RALF program be reinstated with the following program modifications:

1. The Council will consider and exercise approval over all RALF loan requests, doing so on a case-by-case basis to ensure consistency with the Transportation Policy Plan and to determine policy and priority implications.

The current process entails granting administrative approval to any request that meets eligibility guidelines and is included in the annual RALF Program Plan. Changing this process from an administrative decision to a Council action would improve transparency in decision-making and provide the Council an opportunity to review loan requests based on:

- consistency with the Transportation Policy Plan
 - status of environmental review work so that early acquisitions do not prejudice project decisions
 - official mapping
 - local support and commitment
 - whether a parcel acquisition is a priority due to either a hardship situation or an anticipated financial benefit because of an imminent risk of development or redevelopment
 - priority in funding requests if anticipated near-term demand exceeds anticipated funding
2. RALF loan requests should be limited to rights-of-way threatened by development or redevelopment or to hardship acquisitions.

The greatest financial benefits of RALF derive from acquiring properties that are at risk of being developed, so the use of RALF funds should be protected for these priority needs.

3. The Transportation Committee will receive an annual staff review of the RALF program that assesses its status, anticipates financial needs, recommends a levy amount for the next annual budget, and addresses related matters.

The annual program review will (1) consider fund balance and outstanding loans, (2) anticipate potential future loan requests, (3) review outstanding loans, consulting with MnDOT and local entity, to determine if the parcels should be sold and the RALF account paid back, and (4) provide a preliminary recommendation for a RALF levy amount for the subsequent annual budget.

In addition:

4. Legislative changes should not be pursued to expand the existing RALF program to include "A" Minor Arterials and other county roads that are not trunk highways or principal arterials.
5. The Council should further investigate the feasibility of restructuring the RALF program to include acquisition of right-of-way for transit projects and/or transit-oriented development (TOD) parcels.
6. The Council will work with MnDOT to establish priorities for interchange projects and will subsequently provide guidance on the use of RALF funding.
7. The guidelines and process for the RALF program will be reviewed, modified and updated to reflect the adopted program changes.

Attachments

1. RALF statute (Mn. 473.167)
2. RALF Levy by Year
3. Schedule of RALF Loans
4. ProSource Financial Evaluation