



**Local  
Agricultural  
Easement  
Purchase  
Program**

### **Purpose of this Handbook**

This Handbook was written by the Ohio Department of Agriculture's Office of Farmland Preservation (OFP) to help Local Sponsors with the process of assisting farmland owners who wish to participate in the Clean Ohio Local Agricultural Easement Purchase Program (LAEPP). Local Sponsors include county commissioners, township trustees, municipal councils, or charitable organizations (non-profit organizations, land trusts, and land conservancies), which must apply for state grant funds on behalf of landowners. Only those Local Sponsors which have been certified and selected for funding may offer and manage an application process for landowners who wish to participate in the Clean Ohio LAEPP. Landowners located within the counties covered by the Local Sponsor's certification area may apply. Check with the Local Sponsor for this information.

It is expected that Local Sponsors (LS) will seek the assistance of professionals on their staff or in their community to help with the application process. These professional representatives may include local farmland preservation office coordinators, county planners, soil and water conservation district staff, Ohio State University (OSU) Extension agents, or private consultants. In addition, it is expected that LS will work closely with township trustees and county commissioners to ensure preservation does not conflict with officials' long-term plans for the area. While the intent of this Handbook is to help LS and their professional representatives complete applications and understand the process of selection, landowners and supporting professionals may also find information in this Handbook helpful. LS are encouraged to share this Handbook with landowners and other partners interested in agricultural easements.

### **Landowner Should Seek Professional Advice**

An agricultural easement can be a major decision for a landowner and his or her family. In order to ensure that the best interests of the landowner are met, ODA highly recommends that the landowner seek independent legal counsel, as well as independent financial advice. Landowners may not rely upon legal and financial advice from LS, LS board members, or ODA.

# **Application Handbook**

## **Chapter 1 – Overview**

*provides a historical overview and general information about the Clean Ohio LAEPP*

## **Chapter 2 - Players and Roles**

*reviews the roles and responsibilities of those involved in the application process*

## **Chapter 3 – About the Application**

*outlines general information about the online application*

## **Chapter 4 – How to Apply**

*describes in detail how to apply to the program*

## **Chapter 5 – Post-Approval Process**

*describes the post-selection steps for a landowner and Local Sponsor*

## **Chapter 6 – Frequently Asked Questions**

*includes frequently asked questions by Local Sponsors and landowners*

# **Chapter 1: Overview**

**Why Preserve Ohio Farmland?**

**Agricultural Easements**

**What is the Local Agricultural Easement Purchase Program?**

- **History**
- **Today's Clean Ohio LAEPP Program**

### **Why Preserve Ohio Farmland?**

Between 1950 and 2007, Ohio lost more than 7 million acres of farmland, representing nearly one-fourth of Ohio's land mass and a size equivalent to 23 Ohio counties. Ohio lost farmland at a much faster rate than other states, ranking second in the nation for lost prime farmland but only 31st in the nation for population growth.

What are the implications of Ohio's loss of farmland? Land is at the heart of agriculture, and farmland preservation is at the center of maintaining the state's agricultural heritage which provides food, energy, products, and jobs. Food and agriculture together constitute the state's largest industry, contributing more than \$105 billion annually to the state's economy and providing jobs to one in seven Ohioans.

Ohio's Farmland Preservation Program preserves land in agricultural production. It also enables landowners to invest the proceeds from the sale of the easement in expanding their operations, installing conservation practices, paying off debt, planning for their retirement or their children's education, or other projects. The funds circulate in and strengthen Ohio's economy.

Farms selected for the LAEPP are located in areas where local government support farmland preservation either by resolution or by the adoption of township or county comprehensive plans. Some counties also have adopted Agricultural Security Areas and/or Agricultural Economic Development plans, both geared to keeping land in agricultural production because of that sector's importance to Ohio's economy. For a farm to be eligible for easement purchase, the farm cannot be in the direct path of development or in an area the local government has designated for another purpose.

### **Agricultural Easements**

An agricultural easement is a voluntary, permanent, legally binding restriction placed on a farm. The easement limits landowners' use of the land to predominantly agricultural activity. The restrictions of the easement prohibit landowners from converting the land to non-agricultural uses and are binding on all future owners of the property. The landowner who gives up these "development rights" continues to privately own and manage the land and may receive significant federal tax advantages for the donated portion of the easement. In addition, the landowner has contributed to Ohio's public good by preserving the agricultural values associated with the farmland for future generations.

The Ohio Revised Code, Section 5301.67, defines an agricultural easement as:

*...An incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that*

## Chapter 1: Overview

*purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.*

Agricultural easement purchase programs alone cannot meet farmland policy expectations - there is simply too much farmland and too few dollars. Other public programs include Current Agricultural Use Valuation (CAUV), agricultural districts, agricultural security areas, local zoning and comprehensive land use planning, as well as federal conservation and farmland preservation programs. In addition, there are numerous private land trusts in Ohio which operate conservation and farmland preservation programs. Purchase of agricultural easements is most effective when used in conjunction with these other instruments. The Clean Ohio LAEPP gives priority to areas that use multiple protection techniques.

An agricultural easement differs from a "conservation easement," which retains land in its natural, scenic, open or wooded condition. While land subject to a conservation easement could be used secondarily for agricultural purposes, the agricultural uses cannot conflict with the natural, scenic, open or wooded conditions on the land. To allow agriculture as the predominant use on the land, the Ohio legislature amended the conservation easement provisions in Ohio Revised Code Section 5301.67 to create the agricultural easement as a separate legal instrument. By statute, ODA can hold agricultural easements; it cannot hold conservation easements.

### **Benefits of agricultural easements include:**

- Permanent protection of productive farmland while keeping the land in private ownership and on local tax rolls.
- Can be flexible and can be tailored to meet the needs of individual farmers and ranchers and unique properties.
- Can provide farmers with tax benefits including income and estate tax reductions.
- May help farmers and ranchers transfer their operations to the next generation.

### **Drawbacks to agricultural easements include:**

- Easements must be carefully drafted to ensure that the terms allow farmers to adapt and expand their operations and farming practices to adjust to changing economic conditions and future agricultural advancements.
- Monitoring and enforcing easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.
- Agricultural easements do not offer protection from eminent domain or improvements necessary for the health, public safety, and overall wellbeing of the community. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.

## What is the Local Agricultural Easement Purchase Program?

### History

Ohio is one of 30 states to offer a statewide agricultural easement purchase program. Although the state considered farmland preservation benefits during the 1970s, it did not initiate a statewide program. During the 1980s and early 1990s, a grassroots movement created a focus on preservation of highly productive soils, growth management, traffic congestion, land use conflicts and the cost to taxpayers to serve dense vs. spread out developments. This movement led to a renewed interest in land use policy and farmland preservation programs.

The Ohio Farmland Preservation Task Force was created in 1996 under Executive Order 96-65V. This order recognized the "priority to preserve Ohio's productive agricultural land and protect against the unnecessary and irretrievable conversion to nonagricultural uses." The Task Force recommended the creation of an Office of Farmland Preservation within the Ohio Department of Agriculture. It also recommended the creation of an agricultural easement purchase program.

In January 1999, Senate Bill 223 was signed into law, making it possible to create an agricultural easement purchase program. This law enabled the Ohio Department of Agriculture, local governments, and nonprofit organizations to hold, acquire, and accept agricultural easements. It specified that the program would be voluntary. Not until the passing of SB 223 was a funding mechanism determined. This bill granted a legal basis for establishing the Clean Ohio Fund's Agricultural Easement Purchase Program (AEPP), as well as the Ohio Agricultural Easement Donation Program.

With the legal basis created for the program, funding had to be secured. In November 2000, Ohio voters approved the \$400 million Clean Ohio Fund. Under House Bill 3, signed into law in July 2001, the Clean Ohio Fund included \$25 million over four years for the Ohio AEPP. The Clean Ohio Fund also provided \$200 million for brownfield restoration, \$150 million for open space and stream corridor acquisition, and \$25 million for recreational trail creation. The program was renewed by the voters in 2008.

Clean Ohio bond sales are authorized by the General Assembly in the capital budget. Per the Ohio Constitution, Clean Ohio bond sales are held once per fiscal year and capped at \$50 million. Bond sale proceeds are shared between Clean Ohio's three programs – Open Space, Trails, and Farmland Preservation. Ohio Revised Code 901.21(G) limits Farmland Preservation's share of the proceeds to 12.5%, or roughly \$6.25 million.

### Clean Ohio Local AEPP Program

The Clean Ohio LAEPP provides grants to farmland owners for placing an agricultural easement on their property. Awards are issued for up to 75 percent of the points-based appraised value of a farm's development rights. All easement transactions are permanent, are recorded on the property deed, and transfer with the land to successive owners.

## Chapter 1: Overview

### **Benefits of the LAEPP program include:**

- Permanent farmland protection, while maintaining private ownership and continuing to contribute to the local tax base.
- Participation in the LAEPP is voluntary.
- Implementation is through partnerships between the state and local governments or local charitable organizations.
- The local sponsoring organization, the Ohio Department of Agriculture and in some cases the Natural Resources Conservation Service will defend the easement's farmland preservation purpose in court if necessary.
- Landowners may use the proceeds from the sale of the agricultural easement to expand their operations, reduce debt, provide for their retirement, send their children to college or for other expenses.
- Ohioans are investing in the state's #1 industry – food and agriculture.



# **Chapter 2: Players and Roles**

## **Players and Roles**

### **Application Process: Pre-Selection**

- **Central Players and Roles**
- **Supporting Players and Roles**

### Players and Roles

The application process for the Clean Ohio LAEPP involves many players to ensure that farmland preservation is a community priority. The tables on the following pages describe the players and their roles. Three particular players are central to the process:

1.) The Local Sponsor (LS)

The LS completes and submits the application on the landowner's behalf. The local sponsor can be a municipal corporation, county, township, soil and water conservation district or charitable organization that has been certified by the Ohio Department of Agriculture.

A landowner cannot submit an application to sell an agricultural easement directly to the ODA. The Ohio legislature requires applications to be submitted by a Local Sponsor on behalf of the landowner in order for the nominated property to be considered for agricultural easement purchase. If the local government or conservation organization declines sponsorship, there is no appeals process for the state to overturn the local decision. Applications submitted directly by the landowner will not receive consideration.

2.) The landowner

The landowner decides whether to participate in the program and works with the LS to submit an application. If no LS serving the landowners' county have received funding this year, the landowner should encourage their local government, SWCD or land trust to apply for certification at the next opportunity. It is recommended that the landowner work with their local governments to build support for farmland preservation through the adoption of planning documents that put the local government on record as having considered and set aside areas specifically for agricultural production and related businesses. Support from local elected bodies is critical to the long term success of farmland preservation programs.

3.) The Ohio Department of Agriculture (ODA)

The Ohio Department of Agriculture directs the easement program. ODA also provides staff assistance for the Ohio Farmland Preservation Advisory Board, which makes recommendations regarding the application and program finalists. The Director of Agriculture receives the advisory board's counsel and makes the final decision on the program's funding recipients.

The following "players and roles" are those that relate to the application process for the Clean Ohio LAEPP. These are merely guidelines to assist Local Sponsors and landowners in the application process:

**Central Players and Roles in the Application Process: Pre-Selection**

| Central Players  | Role  | Specific Duties   |
|--|---|---|
| <p><b>Local Sponsor (LS)</b> (county, township, municipal corporation, soil and water conservation district, or charitable organization)</p> | <p>The Local Sponsor (LS) has applied to ODA and has been Certified to conduct a Local AEPP application round. The LS has been awarded a specific amount of Clean Ohio funds for agricultural easement purchases. The LS will direct and assist landowners in applying for funding. At the conclusion of the application period, the LS will submit the highest scoring applications to ODA for approval for funding.</p> | <ul style="list-style-type: none"> <li>• agrees to be a co-holder and monitor of the agricultural easement</li> <li>• conducts Local AEPP funding round by soliciting applications from landowners and utilizing ODA’s online application</li> <li>• completes application including providing all attachments</li> <li>• verifies accuracy of application and signs the application upon submittal to ODA</li> </ul>   |
| <p><b>Landowner</b></p>  | <p>The landowner takes the initiative to enter into the program by contacting a Local Sponsor (LS) and applying to the LS during the Local AEPP application period. The landowner makes the decision on whether to apply to the Clean Ohio LAEPP.</p>   | <ul style="list-style-type: none"> <li>• voluntarily agrees to apply to a LS and complete a landowner application</li> <li>• has read Policies and Guidelines document and certifies that their property is eligible for the LAEPP</li> <li>• either individually or in conjunction with the LS, private funding, etc., commits a minimum 25% of the easement’s points-based appraised value as a donation or cash match</li> <li>• assists in the completion of the landowner application, including signature page</li> </ul> |

## Chapter 2: Players and Roles

|   |  |   |
|---|--|---|
| <b>Ohio Department of Agriculture (ODA)</b> | ODA administers the Clean Ohio LAEPP and works in conjunction with the Ohio Farmland Preservation Advisory Board to confirm the selection of farms on which easements will be purchased and recommend them to the ODA Director for final approval. | <ul style="list-style-type: none"><li>• certifies LS and determines amount of funding available per entity</li><li>• provides landowner application(s) for LS</li><li>• determines application guidelines and policies</li><li>• Director of Agriculture approves the LAEPP finalists</li></ul> |
|---|--|---|

## Supporting Players and Roles in the Application Process: Pre-Selection

| <b>Supporting Players</b>                              | <b>Role</b>  | <b>Specific Duties</b>   |
|--|--|--|
| <b>Director of Agriculture</b>                         | The Director of Agriculture approves the farms on which easements selected through the LAEPP will be purchased.                        | <ul style="list-style-type: none"> <li>• receives and considers the Advisory Board’s recommendations</li> <li>• chooses LAEPP funding recipients (Local Sponsors) and farms approved for agricultural easement purchases</li> <li>• provides approval or disapproval for farm exceptions</li> </ul>  |
| <b>Ohio Farmland Preservation Advisory Board</b>       | The Advisory Board advises the director of ODA in program decision-making and selection of farms on which easements will be purchased. | <ul style="list-style-type: none"> <li>• advises the director of ODA and staff with respect to LAEPP guidelines and policies</li> <li>• advises the director of ODA and staff in selecting LS and amount of funding for each LS</li> <li>• advises the director of ODA in approving landowners selected for funding by the LS</li> </ul>                                   |
| <b>County Auditor</b>                                  | The county auditor verifies key information required in filling out the application.   | <ul style="list-style-type: none"> <li>• verifies that the application property is in Current Agricultural Use Valuation (CAUV)</li> <li>• verifies that the application property is located in an Agricultural District</li> <li>• provides the most recent appraised market value</li> <li>• can assist in sketching a map of the application property</li> </ul>        |
| <b>County Engineer</b>                                 | The county engineer provides technical assistance to the applicant.  | <ul style="list-style-type: none"> <li>• can verify in application that all distances are accurate</li> </ul>  |
| <b>County Recorder</b>                                 | The county recorder provides the most current deed information.  | <ul style="list-style-type: none"> <li>• can provide a copy of the most current deed</li> </ul>  |
| <b>County, Township, Municipal or Regional Planner</b> | The local planner provides technical assistance to the applicant in filling out land use related information on the application.       | <ul style="list-style-type: none"> <li>• can assist in locating other protected lands near the applicant property, determining the amount of development pressure on the applicant property, and detailing local comprehensive land use planning and preservation efforts in the community</li> <li>• can verify in application that all distances are accurate</li> </ul> |
| <b>Family Attorney</b>                                 | The landowner’s attorney advises the landowner on the benefits and impact of participating in this program.                            | <ul style="list-style-type: none"> <li>• advises landowner on how the Clean Ohio LAEPP fits with the landowner’s overall estate planning</li> <li>• provides assurance that program documents are in order</li> </ul>  |

**Chapter 2: Players and Roles**

|  |   |  |
|--|---|--|
| <p><b>Family Tax Advisor (accountant, tax attorney, or other financial professional)</b></p> | <p>The landowner's tax advisor advises the landowner on the benefits and impact of participating in this program.</p>                                     | <ul style="list-style-type: none"> <li>• advises landowner on how the Clean Ohio LAEPP fits with the landowner's financial plans</li> <li>• advises landowner regarding federal tax benefits and consequences, including capital gains, income and estate taxes</li> </ul>   |
| <p><b>Ohio State University Extension</b></p>  | <p>OSU Extension provides general community education in regards to the LAEPP.</p>  | <ul style="list-style-type: none"> <li>• responds to general information requests from landowners in regards to the program</li> </ul>   |
| <p><b>Soil and Water Conservation District</b></p>   | <p>The local Soil and Water Conservation District (SWCD) provides technical assistance to the applicant in filling out the application.</p>               | <ul style="list-style-type: none"> <li>• can provide an aerial photograph of the application property</li> <li>• verifies use of best management practices and conservation planning on the application property</li> <li>• can approve information within application Steps 17 and 18 which includes:             <ul style="list-style-type: none"> <li>○ total number of acres in agricultural use</li> <li>○ data on acres considered prime, unique or locally important</li> <li>○ coded soils map</li> </ul> </li> </ul> |
| <p><b>Natural Resources Conservation Service</b></p>   | <p>County Natural Resources Conservation Service (NRCS) representatives provide technical assistance to the applicant in filling out the application.</p> | <ul style="list-style-type: none"> <li>• verifies use of best management practices and conservation planning on the application property</li> <li>• can approve information within application Steps 17 and 18 which includes:             <ul style="list-style-type: none"> <li>○ total number of acres in agricultural use</li> <li>○ data on acres considered prime, unique or locally important</li> <li>○ coded soils map</li> </ul> </li> </ul>   |

# **Chapter 3: About the Application**

**The Application Process**

**Lands Eligible for Purchase of Agricultural Easement**

**Before Starting the Application**

**Points Estimator**

**Ranking System**

**Finalists**

## Chapter 3: About the Application

### The Application Process

The application will be open and available to applicants year round, with the submission period open for 90 days beginning January 18, 2022. Local Sponsors (LS) are responsible for ensuring that all parts of the application are completed by the appropriate persons or agencies by the deadline selected by the LS. Incomplete or late applications will be disqualified. Upon completion, LS will submit their highest ranking applications to the Ohio Department of Agriculture (ODA) for final review and approval for funding.

Highest scoring landowner applications must be sent by the LS to ODA by hardcopy. Upon close of their landowner application period, LS shall submit their completed highest scoring landowner applications (hardcopy) within ten (10) business days of the close of their application period, but in no event later than April 30, 2015. The hardcopy shall consist of a printout of the application along with the required attachments and signatures.

Once the LS has forwarded the highest scoring applications to ODA, staff will review them and make a recommendation to the Ohio Farmland Preservation Advisory Board. The board will meet and make a recommendation to the Director of Agriculture. The Director will make the final determination as to which applications are approved. Once approval of selected farms is complete, landowners will be notified of their standing. Scoring information will be provided online and finalists will be contacted by their LS. Further instructions will be provided once final selections have been made. Once finalists are chosen, it can take on average 12-24 months to close an agricultural easement and for the landowner to protect a farm. This process can be shortened if the landowner has a clean title, there are no mortgages or oil and gas leases to subordinate or extinguish, and if the landowner's family is supportive of ODA's purchase of the easement.

### Lands Eligible for Purchase of Agricultural Easement

The *Policies and Guidelines* document outlines all of the yearly programmatic requirements which must be met in order for a landowner to apply to the Clean Ohio LAEPP. Below are a few of these eligibility requirements, outlined by the Ohio Administrative Code:

- The application property shall be valued, at the time the application is made, at its current agricultural use valuation for real estate tax purposes under section 5713.31 of the Revised Code, except that the homestead, wind energy-producing facilities and bio-digesters for on farm use and/or other land uses as determined by the director need not be so valued.
- Landowner must have fee simple title to the land. Property with severed mineral interests is not eligible for purchase.
- The landowner must certify that, to the best of the landowner's knowledge, the application property contains no hazardous substances or toxic wastes.



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- All parcels submitted under one application shall be contiguous and no land that is included as part of the submitted parcels shall be excluded. Waiver of this requirement may be considered by ODA on a case-by-case basis.
- The application property shall be enrolled, at the time the application is made, in the agricultural district program except that the homestead, wind energy-producing facilities and bio-digesters for on farm use and/or other land uses as determined by the director need not be so valued.
- The application property shall be zoned agricultural. Property not zoned for agricultural use shall not be accepted for purchase.
- An application must provide at least a twenty-five per cent local matching contribution in cash, or the landowner may agree to accept a minimum of a twenty-five per cent reduction of the appraised agricultural easement value.

### **Before Starting the Application**

Before starting the application, which is comprised of 20 Steps and contains an Attachment Checklist, the following documents available on ODA's web site should be reviewed to ensure landowner's full understanding of the program and commitment to its purpose to maintain the land forever in agricultural production:

- **Clean Ohio AEPP Brochure**  
The brochure provides basic information on the program.
- **Sample Deeds of Agricultural Easement**  
If chosen for funding, a similar deed will be placed on the property. The landowner should be willing to comply with the deed conditions. Three areas that are typically of highest interest to landowners are homestead areas/new residences, prohibition on subdividing of the easement property, and non-agricultural development issues. ODA advises landowners to review these and all sections of the deed with a personal attorney prior to application to the Clean Ohio LAEPP.
- **Policies and Guidelines**  
Each year guidelines and policies are re-evaluated; therefore, it is important to read them completely each funding round prior to creating an application. A copy of the Policies and Guidelines is located on ODA's Web site. Key areas of interest for applicants may include: farm size requirements, eligibility criteria, homestead policy, no subdividing policy, large and small farm exceptions, and funding caps,.

### **Points Estimator**

The purpose of this online tool is to provide landowners and local sponsors with an estimate of the total score of their landowner LAEPP application before filling out the entire application. To utilize this tool, click on the "Points Estimator" button on the left

## Chapter 3: About the Application

menu of the application Web site. This tool is an abbreviated version of the actual application. It uses the questions from the application to calculate an estimated score.

### Ranking System

The Ohio General Assembly has provided explicit guidance concerning the scoring of applications to determine which farms will be permanently preserved under the Clean Ohio LAEPP. For more details see Ohio Revised Code 901.22 and Ohio Administrative Code 901-2. In the ranking system which was developed with stakeholder input, application criterion totals 100 possible points. Refer to the application located on ODA's Web site for specific questions relating to these priorities, as well as the point distribution within each section.

### 100 possible points

- 1.) **Soil type:** The rules give preference to farms that contain the greatest proportion prime soils, unique or locally important soils, microclimates, or similar features. This information must be approved by the local SWCD or NRCS representative. A designation of 'unique' or 'locally important' may be pursued by working with the county's USDA district conservationist and the county commissioners. The purpose is to protect the most agriculturally productive and conducive soils. This section is Step 18 within the application. (20 points)
- 2.) **Proximity to other agricultural land:** The rules give preference to land that is adjacent to or in close proximity to other agricultural land or land that is conducive to agriculture. This includes lands that are, or in the process of becoming, permanently protected from development by agricultural easement or otherwise, so that a buffer would exist between the land involving the proposed agricultural easement and areas that have been developed or likely will be developed for purposes other than agriculture. The purpose is to ensure long-term farm viability. This section is Step 12 within the application. (15 points)
- 3.) **Use of best management practices:** The rules give preference to farms which have federally or state approved conservation plans and a history of substantial compliance with applicable federal and state laws. The highest ranking is given to farmland with established and implemented conservation plans, including nutrient management plans. This information must be approved by the local SWCD or NRCS representative. This section is Step 17 within the application. (5 points)
- 4.) **Development pressure:** The rules give preference to land that is in imminent, but not currently in the direct path of urban development. This is often referred to as intermediate development pressure and includes farms that are neither directly in front of the bulldozer, nor far from development's fringe, but rather farms that are midway between intense pressure and no pressure at all. Land in the path of development will not be selected for purchase. This section is Step 13 within the application. (15 points)

- 5.) **Local comprehensive land use planning:** The rules give preference to areas identified for agricultural protection in local comprehensive land use plans. These points are awarded as an acknowledgement of the importance of local efforts to manage growth and preserve productive farmland. This section is Step 15 within the application. (16 points)
- 6.) **Other criteria:** The rules allow for the director to determine other criteria for selecting applications such as enrollment in an Agricultural Security Area, historical designation, higher local match, or first farm in the county to receive statewide purchase program funding. Under the LAEPP, some LS may have an "Other" section of the landowner application that has been localized for their community's needs. LS will notify their landowners of a localized "Other" section. This section is Step 14 within the application. (29 points)

### **Finalists**

After the completion of the landowner application period, the LS will rank landowner applications and submit their highest-ranking applications to ODA for final approval for funding. Prior to the landowner application period, the LS was awarded a set amount of funding for their entity. Upon submission to ODA, the director, with advice from the Advisory Board, will determine program finalists. The maximum purchase price under the LAEPP is 75 percent of the points-based appraised value of the agricultural easement.

Once the Director has finalized funding decisions, finalists are contacted by their LS, if an offer is to be made. Once all offers have been accepted, the LS will announce the funding round complete and mail a completed round notification to all landowners who participated.

# **Chapter 4: How to Apply**

**Creating a New Account**

**Log In and Complete the Application**

- **Local Sponsors**
- **SWCD**

**How to Copy a Previous Year's Application**

**Printing the Application**

**Attachment Checklist**

**Submitting an Application**

### **Contact Your Local Sponsor**

Landowners interested in applying to sell an agricultural easement on their farm should start by contacting their Local Sponsor (LS). LS can be soil & water conservation districts, counties, townships, cities or land trusts. For information on LS in your area, contact the Office of Farmland Preservation.

### **Creating a New Account**

To reach the Clean Ohio LAEPP landowner application Web site, go to [www.agri.ohio.gov/farmland](http://www.agri.ohio.gov/farmland), and then navigate to the button located on the Clean Ohio LAEPP page. To create a new application or to work on one that you've already started, log into one of two accounts on the left menu within the application Web site—either a **Local Sponsor** account or a **SWCD/NRCS** account. This designation will depend upon your role in the application process. The first step is to create an account as one of these two entities (“New Local Sponsor” or “New SWCD/NRCS”).

Once the account has been created, you will be able to return later to that account through the “Login” link, using your “User Name” and “Password” for that account. Throughout the application process, it will be important to remember the “User Name” and “Password,” and the “LSID” (for a Local Sponsor) or “SWCD/NRCS ID” (for a SWCD/NRCS account).

The original Local Sponsor login must be used in order to copy information from a previously submitted application.

**Important Log In Note:** when logging in for the first time in a new funding round, the LS/SWCD/NRCS representative may encounter a message that reads: “Local Sponsor is not confirmed. Please call (614) 728-6210.” If you encounter this message, please contact the Office of Farmland Preservation for assistance.

### **Log In and Complete the Application**

#### **Local Sponsors Login**

The Local Sponsor (LS), once logged into the system, will be able to create applications and enter the needed information. The first thing to appear will be the “Farm List”, listing all applications that have been started or submitted. To work on a specific application, select “Edit” across from the farmland owner’s name. To create a new application, simply click on “Add a New Farm” or “Add a New Farm with Local Sponsor” button. The latter option will begin an application with Step 2, the local sponsor information already completed. This information may be edited if necessary.

As each step of an application is completed, click “Save” at the bottom of the page. This will allow you to return to the application for editing at a later time. Please do not click “Submit” until you are ready to submit an entire application (The system will not allow a user to submit an application until steps 1-18 are complete).

## Chapter 4: How to Apply

**Do not use the “Back” button on your browser, as you may lose unsaved information.** Use the side bar located on the left of the application screen to navigate through the different steps of the application.

Once an application has been started, the LS, SWCD, or NRCS representative can complete Steps 17 and 18, although ultimately these steps must be approved by either a SWCD or NRCS representative. In order to complete these steps, the LS must supply the representative with the needed information (Farm ID, Landowner Last Name, and the Farm Address, County, Township, and Acreage). With this information one will have the needed information to complete Steps 17 and 18 of the application.

When all Steps have been completed, submit the application electronically and print the application. If an application is submitted in error, contact the OFP to un-submit. The Office can also delete applications if necessary.

### **SWCD/NRCS Login**

After logging into the system, the SWCD or NRCS representative will be able to complete Steps 17 and 18 of an application. Once the SWCD or NRCS representative has logged into the system, a “Farm List” will appear listing all applications that have been started or submitted. To work on an existing application, select “Edit” next to that farm. If the farm does not appear in the queue, click on “Add a New Farm,” and the farm will be added to the list.

***Important Log In Note:*** when logging in for the first time in a new funding round, the LS/SWCD/NRCS representative may encounter a message that reads: “Local Sponsor is not confirmed. Please call (614) 728-6210.” If you encounter this message, please contact the Office of Farmland Preservation for assistance.

To input information for any given farm, the following information, which can be collected from the LS, is needed: Farm ID, Landowner Last Name, Farm Address, County, Township, and Acreage. Once Steps 17 and 18 are completed, and the LS has completed the remaining steps of the application, the LS will have the ability to submit the application electronically and print a copy to gain signatures. The SWCD or NRCS signature will be needed on Step 20.

It is important while completing Steps 17 and 18 of an application to click “Save” at the bottom of the page. This will allow you to return to the application for editing at a later time without losing previous work. The application will allow a partial step to be saved. The system will not allow a user to submit an application until Steps 1-18 are complete.

**Do not use the “Back” button on your browser, as you may lose unsaved information.** Use the side bar located on the left of the application screen to navigate through the different steps of the application.

### How to Copy a Previous Year's Application to the current year

For those LS who submitted applications in past years and wish to submit those same farms again, the application system allows the LS to access applications submitted in previous years. This function is intended to assist the LS in submitting a new application with less effort required to re-enter data from a previous funding round.

To utilize data from a previous year's application:

- 1.) Log into the system as a Local Sponsor
- 2.) From the "Farm List" that appears, select the desired farm and click "Copy."
- 3.) A copy of that farm will appear on the list. This will be the copy that you will re-submit (Note: This copy will be assigned a different "FarmID" than the original. You will effectively be submitting a new farm for the given funding round, but with a great deal of information from the previous year(s) automatically entered into it.)
- 4.) Click on the "Edit" button of this copy, which will allow you to open, edit, and submit the application. Not all information will copy from year to year.

Please note that all submitted LAEPP applications are subject to the same requirements, regardless of whether information was duplicated from previous applications. Information such as tax records, local resolutions of support, and CAUV tax records must be updated for the current funding round. Some questions will purposefully not copy over from year to year.

### Printing the Application

To print a **blank application** click on the "Print Blank Application" button on the left menu of the screen. This will print all steps of a blank application.

In order to print a **complete application**, the LS must "Submit" the application.

To submit and print:

- 1.) The LS will need to log in
- 2.) Click on Step 19: Points Based Appraisal, located on the left side menu
- 3.) Enter the LSID and the FARM ID as directed
- 4.) Click on "Submit Electronic Application"
- 5.) Click "Next" on Step 20
- 6.) Click "Print Electronically Submitted Application"

The application is not complete until the printed version of the application includes all necessary signatures for Step 20 and the Attachment Checklist has been completed. Multiple signature pages may be included as necessary.

To print a **draft application**, meaning an application that is not fully complete, login and click on the "Draft Print" button across from the farm to be printed. This will print all steps of the application, including parts that have been completed and some that have not been completed. "DRAFT" will appear behind the information, indicating the application has not been submitted.

## Chapter 4: How to Apply

### **Attachment Checklist**

Once the application is printed there are items that need to be attached in order to complete the application. The "Attachment Checklist" includes information outlined in the OAC in order to provide enough information to understand and certify the characteristics of the farm. The Attachment Checklist will print with the blank application or one may print the Attachment Checklist separately by clicking on the link on the left side menu of the online application webpage.

### **Submitting an Application**

Applications must be complete and turned in to the LS on or prior to the LS application deadline or they may be disqualified. All applications must be received by electronic submission on or before the LS landowner application deadline. The hardcopy, consisting of a printout of the application with required signatures and attachments, shall be sent by mail to the OFP within ten (10) business days of the LS application deadline. Before mailing, it is suggested that a copy of the completed application be made to keep for both the LS and landowner's records.

### **Highest Scoring Applications Selected:**

After the close of the LS landowner application period, the LS will review the electronically generated score for each of the landowner applications submitted from within the area the LS agreed to serve during this application period. The LS will then rank them in order by the number of points scored. The LS will then determine how many of the highest scoring applications can be funded with the funds allocated by ODA to the LS for that funding round.

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# **Chapter 5: Post-Approval Process**

**Notification**

**Next Steps**

**Appraisal**

**Agricultural Easement Guide**

**Present Condition Report**

**Closing Conference**

**Annual Monitoring**

## Chapter 5: Post-Approval Process

### Notification

After submission by the LS of the highest ranking applications to ODA, ODA staff will make a recommendation to the Farmland Preservation Advisory Board regarding the farms selected for funding and convene a meeting of the Advisory Board. At that meeting, the Farmland Preservation Advisory Board will review the ODA recommendations and the highest-ranking applications from each Local AEPP program, and provide funding recommendations to the Director. Once the Director has finalized funding decisions, the OFP will contact the LS to inform them of farms that have been selected for Agricultural Easement purchase. OFP will also inform the landowner through a *Notice of Selection*, indicating the purchase price and known acreage.

### Next Steps

Subsequent to receipt of the *Notice of Selection*, the LS will begin the process of title review. The purpose of title review is to ensure that any third party interests will not affect the continuance of the perpetual easement. An authorized title agency will be hired to complete a title search, checking to ensure that the property is clear of defects or third party interests. Once the title review is complete, the LS will submit it to ODA for Legal Review. Once the final list of items to be addressed is known, landowners will be contacted with title issues that require attention by their LS.

The property will not be subordinate to any other legal or equitable interest, the exercise of which could result in a conversion of the land from predominately agricultural use. Defects or encumbrances on the property may include mortgages, financing statements for fixtures, liens, legal judgments, mineral or gas leases, land contracts and farm leases. If the holder of a lien/mortgage on the property will not sign a subordination agreement prior to the signing of the agricultural easement, the landowner must provide the office of farmland preservation a commitment letter from the lien/mortgage holder which states their obligations to subordinate their interests to ODA once at or prior to landowner receiving any funds from ODA.

Title review is the longest part of the easement purchase process. Landowners and LS are encouraged to order title early, even prior to final application submission, to ensure there are no issues that can delay the process. Failure to submit a complete title package to ODA by the set deadline can result in the applicant property being disqualified from purchase.

After the title review and prior to the parties signing the Agricultural Easement, the landowner and ODA will sign a preliminary agreement, the *Purchase Agreement*. Through the Purchase Agreement, the Landowner acknowledges to ODA that he or she has been advised to consult with an attorney and financial professional prior to signing the Agricultural Easement. Further, the Landowner recognizes the perpetual nature of the easement, and the types of restrictions associated with the document. The Landowner also agrees to accept the funds. If all the parties agree to the terms

by signing the *Purchase Agreement*, the OFP will proceed in its closing process.

ODA may require that the property be surveyed by a duly licensed surveyor at the landowner's expense, if ODA determines that the boundaries of the easement property are not sufficiently described to enforce the easement or if a survey is required to record the easement.

### **Appraisal**

ODA may also require that a comparable land appraisal be conducted at the landowner's expense, if necessary. Landowners will be notified if their land requires an appraisal as early in the process as possible. The Office will provide requirements of the appraisal and/or the appraiser.

If ODA does not require an appraisal, the landowner can obtain one independently of the program. ODA strongly recommends that landowners contact an independent tax professional to determine if an appraisal would result in additional income tax benefits. Although ODA does not recommend any specific appraisers, it does suggest using a state-licensed or state-certified appraiser who follows the uniform standards of professional appraisal practices in order to ensure tax benefits if any are available.

### **Agricultural Easement Guide**

This section summarizes each of the provisions in ODA's sample easement. This guide is intended to assist landowners, Local Sponsors (LS), and their advisors to understand the provisions of the sample Agricultural Easement used by ODA. Please note that the easement is subject to change. The guide below may differ from the final version of the easement used.

The purpose of ODA's easement (as stated in the purpose of the deed) is for the applicant property to be "retained in agricultural use...by preserving and protecting its agricultural soils and viability through a perpetual restriction on the use of the Protected Property".

The following few pages walk you through the sample Agricultural Easement:

*Grantor.* Refers to the landowner, partnership, corporation, or trust that sells and/or donates an agricultural easement

*Grantee.* Refers to the organization that accepts, holds, monitors, and enforces the terms of the agricultural easement. State Grantee refers to ODA, Local Grantee refers to the LS, and if applicable NRCS refers to the United States Department of Agriculture, Natural Resources Conservation Service.

*Recitals.* The easement begins with a series of introductory paragraphs that establish ODA's qualifications to hold an agricultural easement and summarizes the agricultural and other conservation values of the property. The conservation and public benefits

## Chapter 5: Post-Approval Process

mentioned here are important to document if the landowner is looking to qualify the easement as a charitable contribution for tax deduction purposes.

*Exhibits.* Exhibit A is a copy of the title to the land, also known as the legal description, Exhibit B is the Present Condition Report, and Exhibit C is a list of existing rights-of-way and easements on the property.

*Statement of Purpose.* This is a statement that documents the primary purpose of the easement as protecting the property's "agricultural soils... and viability." A secondary purpose of the easement may be to protect or preserve woodlots, wetlands, or other natural areas that can provide agricultural benefits, or areas of the farm of historic or cultural value such as Native American mounds.

In the case of agricultural easements where the landowner is donating a portion of the easement, the IRS considers these primary and secondary purposes, as well as other ancillary benefits such as preserving plants, protecting wildlife habitat, and providing scenic views, as conservation values of the property.

*State Agricultural Conservation Policy.* These paragraphs detail the applicable laws to purchasing an agricultural easement in the State of Ohio. This section also includes citations of governmental policies—federal, state and local—which address farmland protection. Documentation of these governmental policies further enables the donation portion of the easement to qualify for a charitable tax deduction, if applicable.

1. *Present Condition Report.* The Present Condition Report, or "Exhibit B," is intended to show the current natural and physical conditions of the property. The report also serves as the basis for future monitoring of the easement and possible enforcement. The report will outline a "Farmstead or Homestead Area" if applicable. In the absence of an existing home, a Homestead Area can be delineated for future use. The location of the Homestead Area should help maintain the agricultural viability of the property, but also minimize any impact on the property's agricultural conservation resource values.
2. *Prohibited Uses/Restrictions.* The following paragraphs detail restrictions the easement places on the protected property that would interfere with the agricultural purpose of the easement. **Read this section in conjunction with section 3, which describes the permitted uses/activities.**
3. *Grantor's Reserved Rights.* The following paragraphs detail the right of the landowner to use the property for all purposes that would not interfere with the agricultural purpose for the easement. **Read this section in conjunction with section 2, which describes the restricted uses.**
4. *Responsibilities of Grantor and Grantee.* The purpose of this paragraph is to make it clear that the owner continues to be responsible for taxes, upkeep and maintenance of that property. The local grantee will, once annually, visit the property to ensure that the terms of easement are being met.
5. *Grantee's Enforcement Rights and Remedies.* It is important that the Grantee be able to monitor the site and enforce the easement. This paragraph gives

the Grantee the right to inspect the property, in a reasonable manner and at reasonable times. This section explains that all enforcement costs are to be paid by the Grantor. However, if the Grantor prevails in a lawsuit, then the Grantee shall cover the costs. This paragraph additionally lays out the Grantee's rights to inspect the property, the procedures to be followed if Grantee determines that a violation has occurred, and the remedies that would apply in the event of a violation.

6. *Perpetual Burden.* This paragraph provides that the easement runs with the land forever. Therefore, all future landowners and the Grantee are bound to the original terms and conditions of the easement.
7. *Transfer or Assignment of Easement.* Consistent with IRS regulations, this paragraph allows for the transfer of the easement to a 'qualified organization' that agrees to assume the responsibilities of holding the easement.
8. *Transfer of Protected Property.* This paragraph outlines the steps required to assure that all future owners of the property will be legally bound by the terms of easement.
9. *Extinguishment of Easement.* While an agricultural easement is meant to be in perpetuity, there is a special provision in the law to extinguish (i.e. terminate) the easement. In these rare cases, an easement can be extinguished by a court of competent jurisdiction upon a request to terminate made by the joint request of the Grantor and Grantees after a finding by the court that the conditions or circumstances on or surrounding the land makes it impossible or impractical to continue use of the land for agricultural purposes. If the Easement is extinguished, terminated or condemned, the Grantor shall reimburse Grantees for the amount equal to the proportionate share of the fair market value of the Protected Property unencumbered by the Easement.
10. *Hazardous Waste.* This paragraph claims that Grantor is in compliance with, and shall remain in compliance with all applicable Environmental Laws and that the Grantor indemnifies the Grantee against any claim brought by a third party relating to hazardous waste or violation of environmental laws.
11. *Indemnity.* The state and local Grantees are not liable for the Grantor's negligent acts.
12. *Amendment or Modification of Easement.* The procedures and criteria for considering an easement amendment request are described in this paragraph.
13. *Boundary Line Adjustments.* Boundary line adjustments are permitted only if technical errors were made in the survey or legal description.
14. *Subordination.* Any mortgage or lien arising after the date the Easement is recorded must be subordinated to the terms of the Easement. Any liens, mortgages, easements or other clouds on title existing prior to the date of this Easement must be subordinated to this Easement or otherwise appropriately dealt with prior to execution and recording.
15. *Re-Recording.* This paragraph notes that the local or state Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of the easement.
16. *Notices.* The addresses of Grantor and Grantees are stated here for any legal notifications.

## Chapter 5: Post-Approval Process

17. *Severability*. This is a typical legal document paragraph stating that if any one item in the easement is found to be invalid for any reason, the remainder of the easement remains in force.
18. *Entire Agreement and Waiver*. This paragraph states that the easement is the final document and no other negotiations or agreements override the easement.
19. *Termination of Rights and Obligations*. If the landowner transfers ownership of the farm, he or she remains liable for any acts or omissions prior to the transfer.
20. *Governing Law*. This paragraph sets out the legal authority by which the state can issue easements.
21. *No Merger*. The easement may not be merged with the fee title ownership.
22. *Rules of Convenience*. These paragraphs clarify legal terms within the document, and that the terms included within are the complete terms of the easement.
23. *Signatures*. The Agricultural Easement will be signed by the State Grantee, Local Grantee, and all titleholders, as well as NRCS if applicable.

The foregoing section details the terms of the easement. When reading the easement, Local Sponsors, landowners, and professional advisors should focus on the *Prohibited Uses or Restrictions* and *Grantor's Reserved Rights*. These sections detail the permitted and prohibited uses on the property. These clauses govern the agricultural and residential activities permitted on the agricultural property.

While the Agricultural Easement is a permanent, legally binding contract, which restricts the land use to agricultural activity, the landowner still owns the land. As such, the landowner and all subsequent owners are responsible for paying taxes, maintaining the property, selling or transferring the property, and hold all their rights and privileges of a private property owner.

### **Present Condition Report**

Local Sponsors (LS) or their agents are required to submit a Present Condition Report, which documents the current state of the property. Templates for this document are available on the Ohio Department of Agriculture Web site, <http://www.agri.ohio.gov/apps/odaforms>. LS should facilitate the timely completion and submission of this document. The OFP can assist with answering questions, or directing individuals to examples or agencies with prior experience completing a Present Condition Report. The reports should be in recordable form, as it will serve as Exhibit B to the easement, and attention should be paid to reduce non-necessary information as there is a fee for each page recorded that the landowner will pay at the closing.

### **Closing Conference**

As with any real estate closing, the closing of an agricultural easement will be completed by a title company or escrow agent, in a location as close as possible to the landowner. The purpose of a closing conference is to sign and finalize the Agricultural Easement and to transfer the funds to the landowner. The title agent will

## **AEPP Application Handbook**

arrange a closing that is acceptable to the landowner and the LS. After the Easement has been signed and executed, the title agent will file the signed Easement with the County Recorder. A copy of all recorded documents will be sent to the landowner and LS.

As a note, the landowner may elect to receive payments in installments rather than as a lump sum. For more information on this option, the landowner may contact the OFP.

### **Annual Monitoring**

A farm with an agricultural easement purchased under the Clean Ohio LAEPP is required to be visited annually by the local co-holder (Local Sponsor) of the easement. The local co-holder agrees to be responsible for the monitoring and may assist the state with enforcement responsibilities, if necessary.

# Chapter 6: Frequently Asked Questions

## Frequently Asked Questions/Concerns

1. What are the tax implications for receiving payment for my easement?
2. How does an easement affect property rights?
3. How long does an easement last?
4. Can improvements be made or other buildings built?
5. What does an easement do to the landowner's eligibility for other governmental programs?
6. If I sell an agricultural easement, will I still own my land?
7. How will an easement affect my operation?
8. Will the public have access to my land?
9. Will selling an easement affect my ability to borrow money?
10. Am I protected from eminent domain?
11. Who may grant an agricultural easement?
12. How does an agricultural easement affect a farm lease?
13. Can I sell my property once the development rights are purchased?
14. What sources of funding can Local Sponsors use to provide a match?
15. What is the difference between a conservation and an agricultural easement?
16. Who can hold easements?
17. Do local governments incur any legal responsibilities as the local co-holder of an agricultural easement?



**1. What are the tax implications for receiving payment for my agricultural easement?**

For tax purposes, funds received for selling an agricultural easement are subject to capital gains tax. A landowner concerned with the issue of capital gains tax should consult an attorney or accountant for tax planning.

**2. How does an agricultural easement affect property rights?**

By conveying an agricultural easement, a landowner sells one of the property rights, the right to develop the land for non-agricultural purposes. The landowner continues to hold the remaining property rights of the land, such as the right to possess the property, the right to sell or transfer the property, the right to pass the property to heirs and descendants, the right to receive income and profits from the land, the right to exclude others from the property, and the right to mortgage the property (with limitations). In addition, landowners retain all other property rights, restrictions, and obligations not explicitly set forth in the deed and that do not otherwise conflict with landowners' responsibilities under the deed.

**3. How long does an agricultural easement last?**

Ohio law states that agricultural easements purchased with state money through the Clean Ohio LAEPP must use "perpetual" easements. A perpetual easement is one that remains with the land forever. If the landowner sells or transfers land on which there is an agricultural easement, the agricultural easement is binding on the new owner as well as on all subsequent owners of the land. Under extremely unique conditions, such as the unsuitability of the property for any agricultural purposes due to an external change, the landowner may petition for extinguishment. ODA and the Local Sponsor must agree that the property no longer has agricultural value, and submit a request to the court for extinguishment. However, the landowner would then be required to repay the cost of the easement, plus appreciation. The competitive screening process is designed to ensure that extinguishment will not be necessary, and easements should be considered perpetual. Refer to a deed's extinguishment clause for further details.

**4. Can improvements be made or other buildings built?**

Generally, minor improvements and changes to the property are permissible. Major changes and construction of new buildings or houses may require permission of the holder(s) of the agricultural easement. The landowner will enter into an Agricultural Easement, which will address in detail specific improvements or building construction that are permissible, that require permission of the holder(s), or that are prohibited. A sample of this easement can be found on the Office of Farmland Preservation's website at [www.agri.ohio.gov/farmland](http://www.agri.ohio.gov/farmland).

**5. What does an agricultural easement do to the landowner's eligibility for other governmental programs?**

For farm program payments and other programs that require active involvement in the operation and risk bearing, the agricultural easement should not affect the landowner or the tenant's eligibility for the program. The state and local holders of the

## Chapter 6: Frequently Asked Questions

agricultural easement do not actively participate in the farming operation and do not assume any of the risk associated with the farming operation. Program interests will be subordinate to the Agricultural Easement.

### **6. If I sell an agricultural easement, will I still own my land?**

Yes. A landowner continues to hold the underlying title to the land on which he or she sells an easement. The agricultural easement does not convey title to the land itself; instead it conveys **only** the right to develop the land for non-agricultural uses. The landowner still owns the land and may sell, transfer or bequeath the land, and retains all legal responsibility for the property.

### **7. How will an agricultural easement affect my operation?**

Generally, a landowner may continue to operate the farm in the same manner as prior to the conveyance of the agricultural easement, and may undertake changes in the operation as long as they are not prohibited in the Agricultural Easement, or by the Best Management Practices as outlined in a Conservation Plan provided by the Soil and Water Conservation District or county Natural Resource Conservation Service. Major changes in the farm operation, such as an expansion or a new enterprise, may require approval from the holder(s) of the easement.

### **8. Will the public have access to my land?**

No. The agricultural easement does not grant public rights of access to the land. The agricultural easement does allow the holder(s) of the easement to enter the property, but only for the purpose of inspecting the land to ensure compliance with the agricultural easement. The holder is encouraged to give advance notice to the landowner prior to inspecting the property.

### **9. Will selling an easement affect my ability to borrow money?**

Possibly. Selling an agricultural easement conveys part of the landowner's interest in the land. Although the landowner still holds title to the land, the landowner holds fewer rights in the property, which might reduce the value of the property and the amount of equity available for a loan on the property itself. On the other hand, a landowner who utilizes the payment received for an agricultural easement to improve the farm operation's overall financial condition could enhance the operation's ability to borrow money in the future.

A question in a survey of AEPP participants asked if they applied for a loan, what impact AEPP had on receiving that loan. Only two respondents said that they had a somewhat negative impact. Eighteen responded that there was no impact of AEPP on the loan experience. Thirteen respondents said they had a positive experience.

### **10. Am I protected from eminent domain?**

No, an agricultural easement does not prevent the use of eminent domain on the property. However, property that is in the Clean Ohio LAEPP and the Agricultural

District program will be subject to a higher level of scrutiny should there be an attempt to take the land by eminent domain. The Director of Agriculture is authorized to render an opinion on the effect of the eminent domain action on the agricultural area, and the entity seeking to take the land must consider the director's opinion in its final decision.

**11. Who may grant an agricultural easement?**

The owner of the land may grant an agricultural easement. If more than one individual owns the land, all co-owners must agree to convey the easement. Where land is held by a business entity such as a corporation, the officer authorized in the corporation's articles or bylaws to convey property may grant the agricultural easement.

**12. How does an agricultural easement affect a farm lease?**

A landowner may lease land that is in an agricultural easement. The tenant is subject to the provisions of the agricultural easement, and may not engage in any activities that are contrary to maintaining the land for agricultural purposes.

**13. Can I sell my property once the development rights are purchased?**

Yes, you may sell, trade or gift the land to a new owner after the development rights are purchased. The agricultural easement stays with the land, so the new owner and all subsequent owners must abide by the terms of the Agricultural Easement.

**14. What sources of funding can Local Sponsors (LS) use to provide a match?**

The LS has a number of sources it can use to provide its portion of the local match. Senate Bill 223, which was signed into law in January 1999, permits local governments (as appropriate) to:

- Levy a property tax, for up to five years with voter approval, for the purpose of acquiring, supervising or enforcing agricultural easements.
- Levy a sales and use tax, with voter approval, to raise revenue to acquire agricultural easements by debt service on bonds issued to finance those purchases, or to supervise or enforce any agricultural easements held by the county.
- Issue revenue bonds and notes for the purpose of acquiring easements, with repayment pledged with sales and use tax revenues. These bonds are exempt from the statutory county debt limits.
- Issue general obligation bonds, with voter approval, for the sole purpose of acquiring agricultural easements. Debt service on the bonds would be financed by the levy of a voter-approved property tax.
- Use money in the General Fund not required by law or charter to be used for other specified purposes to purchase agricultural easements.

In addition, the LS may also use private funds to leverage the local match. Any federal or private dollars received by the local government must be deposited into a special fund to be used solely for the purchase of agricultural easements.

**15. What is the difference between a conservation and an agricultural easement?**

## Chapter 6: Frequently Asked Questions

The Ohio Revised Code 5301.67 defines an “agricultural easement as an:

*... incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.*

A conservation easement can include agricultural use only to the extent that the agricultural use is consistent with or furthers the purpose of keeping the land in its natural, scenic, open, or wooded condition. The Agricultural Easement addresses specific uses permitted to retain the use of the land as predominantly agricultural.

### **16. Who can hold conservation and agricultural easements?**

There is a difference in who can hold each of these types of easements. An agricultural easement may be granted to the Ohio Department of Agriculture, a municipal corporation, county, township, soil and water conservation district, or a charitable organization. A conservation easement may be granted to the Ohio Department of Natural Resources, a park district, a township park district, a conservancy district, a soil and water conservation district, a county, a township, a municipal corporation, or a charitable organization. (See ORC 5301.68 and 5301.691)

### **17. Do local governments and charitable organizations incur any legal responsibilities as the local co-holder of an agricultural easement?**

Yes. As with the Ohio Department of Agriculture (ODA), the LS is legally obligated to carry out the terms and conditions of the Agricultural Easement. These obligations include the creation of the Present Condition Report, conducting an annual monitoring site visit; submitting an annual monitoring report to ODA; working with the landowner to correct any violations of the easement; and enforcing an easement through a court action, with ODA, if necessary.

The local and state co-holders of the easement are not responsible for any landowner or third party liabilities, such as personal injuries, accidents, negligence, environmental contamination, or other damages, relating to the Protected Property, unless due to the negligence of the co-holders.

### **18. What information needs to be approved by the Soil and Water Conservation District or Natural Resources Conservation Service for the Clean Ohio LAEPP application?**

Per the OAC 901-2-04 (C), the county soil and water conservation district or county natural resources conservation service must approve the following:

- (a) Total number of such available acres considered prime, unique, or locally important (Step 18);
- (b) The date and status of the conservation plan, if any, which has been approved by the county soil and water conservation district or county natural resources

## **AEPP Application Handbook**

conservation service (Step 17); and

- (c) A color-coded soils map containing a list of soil mapping unit names and symbols on the application property.

To approve the above, the county SWCD or NRCS representative will need to sign the completed application (see Step 20). Additionally, the applicant may procure a conservation plan from their local offices.

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