



Clean **Ohio** Fund

Farmland Preservation

**Agricultural Easement Purchase Program
Applicant Handbook**

Second Edition
Original Applicant Handbook was printed January 7, 2002

Purpose of this Handbook

This Handbook was written by the Ohio Department of Agriculture's Office of Farmland Preservation to help local sponsors with the process of assisting farmland owners who wish to participate in the Clean Ohio Fund Agricultural Easement Purchase Program (AEPP). 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.

It is anticipated that local applicants 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. While the intent of this Handbook is to help local sponsors and their professional representatives complete applications and understand the process of selection, landowners and supporting professionals may also find information in this Handbook helpful. Local sponsors are encouraged to share this Handbook with landowners and other partners interested in agricultural easements.

Applicant Handbook

Chapter 1 – Overview

provides a historical overview and general information about the Clean Ohio AEPP

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 online application

Chapter 4 – How to Apply

describes in detail how to apply to the program

Chapter 5 – Frequently Asked Questions

includes frequently asked questions by applicants and landowners

Chapter 6 – Appendix

contains an appendix with pertinent documents to the Clean Ohio AEPP

Chapter 1: Overview

Why Preserve Ohio Farmland?

Agricultural Easements

What is the Agricultural Easement Purchase Program?

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

Why Preserve Ohio Farmland?

People continue to move to the countryside throughout Ohio, some in search of an "open space" lifestyle. Even with the current economic slowdown, recent census data recognized showed that people were moving to unincorporated areas. Some of these township residents to subdivisions; others are on scattered 5-acre lots. In either case, expectations of future land use patterns are affected by the mixing of farm and non-farm activities.

Agricultural land suffers from this development pressure, especially near Ohio's metropolitan areas. For example, the six-county ring around Cleveland (Lake, Geauga, Portage, Summit, Medina, and Lorain counties) produces more than \$241 million annually in agricultural products. Protecting this valuable farmland is essential to securing agricultural production in this region for years to come.

Between 1950 and 2000, Ohio lost more than 6.9 million acres of farmland, representing nearly one-third of Ohio's agricultural land and a size equivalent to 23 Ohio counties. Ohio is losing farmland at a much faster rate than other states, ranking second in the nation for lost farmland but only 22nd in the nation for population growth. This indicates wasteful land use, not growth itself. It is up to today's generation to take steps toward protecting the agricultural land that still exists today.

The obvious question at this point is "so what are the implications of Ohio's loss of farmland?" Of utmost importance are the financial implications. 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 \$98 billion annually to the state's economy and providing jobs to one in seven citizens.

While development may bring greater economic returns per acre as people invest in new enterprises and pay taxes to the local community, haphazard or inefficient growth will weaken a community. Lost farmland can mean lost revenues and higher taxes for Ohioans. Studies show that much of the scattered residential growth costs more to service than it generates in new property taxes. For instance, in Clark County, for every dollar contributed to local revenue, residential areas consume \$1.11 compared to just \$0.30 for open and working lands (American Farmland Trust, COCS). Farmland in this case is supplementing the service and infrastructure needs for the residential areas. There are important growth management problems to solve for Ohio communities as they seek to have the benefits of growth while retaining the benefits of agriculture and open land.

Beyond growth management concerns, there are numerous benefits people receive when farmland is left in farming. Farms produce more than merely food commodities; farms also produce various land services that people value. Few of these other services can be bought by those who value them, because the services are "non-exclusive," available to all whether they pay for them or not.

People look to the policy process to encourage farmers to continue providing the important nonfood services. For example, while there is little evidence of food scarcity, many people want to protect farmland to assure that future generations have enough. They gain a certain personal sense of security from knowing that future generations will not go hungry because we have squandered rich farmland. Farmland also provides various eco-system services, like groundwater recharge, composting of organic wastes, and flood mitigation. Farm woodlots provide wildlife habitat, prevent soil erosion and act as windbreaks. Farmland is a valued source of productive open space as well, providing aesthetic relief from more congested areas. These services are important for all Ohio citizens.

Beyond the Clean Ohio AEPP, farmland protection policies and local comprehensive planning can additionally relieve some of the pressures of farmers. Scattered development increases conflict over trespass, fences, domestic pets, drainage and other ways in which farm and non-farm neighbors come in contact with each other. The use of agricultural preservation tools allows farming to remain both viable and attractive as a way of life.

Agricultural Easements

Several states in New England, including Maryland, Massachusetts and Connecticut, and in the Mid-Atlantic region initiated programs to purchase agricultural easements during the 1970s. The urgency at that time was to maintain food production capacity. Pennsylvania and Maryland have protected the largest acreage with these programs, with approximately 400,000 acres and 430,000 acres enrolled in permanent easements, respectively. Ohio, which prides itself in being one of the most successful programs considering limited staff resources and stretched funding, has preserved nearly 35,000 acres since 1999.

An agricultural easement is a voluntary legal agreement between the landowner, state, and local entity for the purpose of agricultural conservation. The restrictions of the easement prohibit the conversion of 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 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 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

Chapter 1: Overview

property subject to the easement at reasonable times to ensure compliance with its provisions.

Purchase of agricultural easements is one important policy option for protecting farmland. This method enables the public to reimburse an interested farmer for part of the development value he or she forgoes to provide the full set of farmland services. Numerous states now have this option available for farmers and several other states have independently funded local programs. Further, there are more than 1,200 local and regional charitable organizations throughout the country concerned with preserving land, of which nearly half have active farmlands in their portfolio. Thus, conservation and agricultural easement purchase is a widely popular and effective farmland protection alternative that can combine federal, state, local and private funds to assure that selected farm acres are not developed. In those states with long standing programs, there are far more interested farmers than dollars available. The key is to use public dollars wisely to purchase rights on farms that will really make a difference.

Agricultural easement purchase programs alone cannot meet farmland policy expectations - there is simply too much farmland and too few dollars. Other techniques include current use assessment value (CAUV), agricultural districts, agricultural security areas, local zoning and comprehensive planning. Purchase of agricultural easements is most effective if used in conjunction with these other instruments. The Clean Ohio AEPP gives priority to these areas.

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.

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 several tax benefits including income and estate tax reductions.
- May help farmers and ranchers transfer their operations to the next generation by reducing estate taxes.

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.

- 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. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.

What is the Agricultural Easement Purchase Program?

- **History**

Ohio is the 19th state to offer a statewide agricultural easement purchase program. Although the state considered farmland preservation benefits during the 1970s, it did not initiate a program. During the 1980s and early 1990s, a grassroots movement created a focus on growth management, traffic congestion, land use conflicts, sprawl, etc. 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, but it did not provide funding. In effect, SB 223 provided the legal basis for establishing the Clean Ohio Fund's 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, Issue one. Under House Bill 3, signed into law in July 2001, the Clean Ohio Fund included \$25 million for the Ohio AEPP. The Clean Ohio Fund also provided \$200 million for brownfield restoration, \$150 million for open space and stream corridor protection, and \$25 million for recreational trails.

To ensure continuation, funds were divided on a yearly basis, with the \$25 million distributed over years 2002 to 2008. The first funding round allocated \$6.25 million and the remaining years provided \$3.125 million in funding. Throughout this time, 135 agricultural easements have been acquired through the Clean Ohio AEPP and 42 agricultural easements have been donated to the Ohio Department of Agriculture. The department's Office of Farmland Preservation has collectively received more than 1,800 Clean Ohio AEPP applications, yet due to limited

Chapter 1: Overview

funding, the department has preserved only 135 of those farms, totaling 26,813.88 acres, including pending offers.

In addition, the Clean Ohio AEPP's reach was extended through the acquisition of federal matching grants. The Farm and Ranch Lands Protection Program (FRPP) added approximately \$9 million to assist Ohio's farmland preservation efforts.

In November 2008, the Clean Ohio Fund was once again brought to the ballot. Gov. Strickland and the General Assembly's Bipartisan Economic Stimulus Package, a \$1.57 billion investment in Ohio's economy and infrastructure, will create tens of thousands of new jobs, and includes a \$400 million bond renewal for the Clean Ohio Fund. Similar to its original form of 2001, the fund will preserve farmland and green space, develop recreational trails and clean up brownfield sites. Voters overwhelmingly passed the initiative in every Ohio county. Allocation of funds is anticipated to begin in 2009, and \$25 million overall will be used to protect farmland.

- **Today's Clean Ohio AEPP Program**

The Clean Ohio AEPP 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. A payment cap has been set at \$2,000 per acre, with a maximum of \$500,000 per farm. All easement transactions are permanent, are recorded on the property deed, and transfer with the land to successive owners.

The Ohio Department of Agriculture's Office of Farmland Preservation will administer the program with funds from the Clean Ohio Fund. The program includes an application and ranking process to select eligible farms, followed by the distribution of funds to chosen agricultural easements.

Benefits of the AEPP program include:

- Permanent farmland protection, while maintaining private ownership.
- Participation in the AEPP is voluntary.
- Implementation is through partnerships between the state and local governments or local charitable organizations. A local sponsor applies on behalf of the landowner or a private organization.
- Farmers are provided with a financially competitive alternative to development, giving them funds to help address the economic challenges of farming in urban-influenced areas.
- Ecological as well as agricultural resources may be protected.
- The value of agricultural land is limited, which helps to keep it affordable to farmers.
- The non-farming public becomes involved in farmland protection.

Challenges of the AEPP program include:

- The program is expensive. Purchasing easements can be costly to communities and tax payers.
- Rarely can the program protect enough land to eliminate development pressure on unrestricted farms.
- The program is unable to keep up with farmer demand to sell easements. Each year the program can protect only approximately eight percent of applicants. This results in missed opportunities to protect land.
- Purchasing easements is time-consuming.
- The voluntary nature of AEPP means that some important agricultural lands are not protected.
- Monitoring and enforcing easements requires an ongoing investment of time and resources.

Chapter 2: Players and Roles

Players and Roles

Application Process: Pre-Selection

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

Players and Roles

The application process for the Clean Ohio AEPP involves many players to ensure that farmland preservation is a community activity and priority. The tables on the following pages describe the players and the roles they play in this program. Three particular players are central to the process:

1.) The local sponsor or applicant

The applicant is the local sponsoring organization that completes and submits the application on the landowner's behalf. The local sponsor can be the county commissioners, township trustees, a municipality, or a charitable organization.

A landowner cannot submit an application to sell an agricultural easement directly to the ODA. The Ohio legislature requires applications to be submitted by the local government unit or qualified conservation organization on behalf of the landowner in order for the nominated property to be considered for agricultural easement purchase. ODA recommends that the local government that has zoning authority over the nominated property serve as the applicant. However, if there is no zoning over the property, the county government may be in the best position to submit an application. 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 chooses the local sponsor to submit an application.

3.) The Ohio Department of Agriculture (ODA)

The Ohio Department of Agriculture directs the easement program. ODA also staffs the Ohio Farmland Preservation Advisory Board, which makes critical recommendations regarding the application and program finalists and scores the Tier Two narratives of the AEPP application. The Director of Agriculture receives the advisory board's counsel and makes the final decision on the program's funding recipients.

Players and Roles in the Application Process: Pre-Selection

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

Central Players	Role	Specific Duties
Local Sponsor (county, township, municipality, soil and water conservation district, or charitable organization)	The local sponsor applies to the program on behalf of the landowner. The local sponsor is ultimately in charge of filing the complete application in electronic and hard copy form to ODA by the indicated deadline.	<ul style="list-style-type: none"> • agrees to be a co-holder of the agricultural easement • if a political subdivision- provides a resolution or ordinance supporting the application, committing local match (if applicable) and agreeing to monitor, supervise and enforce agricultural easement • if a charitable organization- provides a recorded action supporting the application, committing local match (if applicable) and agreeing to monitor, supervise and enforce agricultural easement <ul style="list-style-type: none"> ○ may also need to provide a copy of by-laws, list of officers, board of directors and members, a statement of the organization's financial condition, a copy of organization's tax exempt status and a statement on the organization's ability to hold, monitor, and enforce an agricultural easement • completes application • verifies accuracy of application and signs the application
Landowner	The landowner takes the initiative to enter into the program by contacting a qualified local sponsor and requesting the entity to apply on the landowner's behalf. The landowner ultimately makes the decision on whether to apply to the Clean Ohio AEPP.	<ul style="list-style-type: none"> • voluntarily agrees to have applicant submit an application on their (the landowner's) behalf • certifies, to the best of the landowner's knowledge, that the application property contains no hazardous substances or toxic wastes • either individually or in conjunction with the local sponsor, commits 25% of the easement's value as a donation or with cash match • assists in the completion of the application, including signature page
Ohio Department of Agriculture (ODA)	ODA oversees the Clean Ohio AEPP and works in conjunction with the Ohio Farmland Preservation Advisory Board	<ul style="list-style-type: none"> • provides application and procedure for filing applications in a timely manner • determines application guidelines • scores applications using a two-tiered ranking system • notifies successful applicants • Director of Agriculture chooses the AEPP finalists

Chapter 2: Players and Roles

Supporting Players	Role	Specific Duties
Director of Agriculture	The Director of Agriculture chooses the program finalists.	<ul style="list-style-type: none"> • receives and considers the Advisory Board's recommendations • chooses AEPP funding recipients • provides approval or disapproval for farm exceptions
Ohio Farmland Preservation Advisory Board	The Advisory Board advises the director of ODA in program decision-making.	<ul style="list-style-type: none"> • advises the director of ODA and staff in preparing the application • advises the director of ODA in scoring applications • advises the director of ODA in choosing of funding recipients
County Auditor	The county auditor verifies key information required in filling out the application.	<ul style="list-style-type: none"> • verifies that the application property is in Current Agricultural Use Valuation (CAUV) • verifies that the application property is located in an Agricultural District • provides the most recent assessment of market value • can assist in sketching a map of the application property
County Engineer	The county engineer provides technical assistance to the applicant.	<ul style="list-style-type: none"> • can verify in application that all distances are accurate • certifies that existing property description is accurate
County Recorder	The county recorder provides the most current deed information.	<ul style="list-style-type: none"> • provides the most current deed reference
County, Township, municipal or Regional Planner	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"> • 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 planning and preservation efforts in the community • can verify in application that all distances are accurate
Family Attorney	The landowner's attorney advises the landowner on the benefits and impact of participating in this program.	<ul style="list-style-type: none"> • advises landowner on how the Clean Ohio AEPP fits with the landowner's overall estate planning • provides assurance that program documents are in order
Family Tax Advisor (accountant, tax attorney, or other financial professional)	The landowner's tax advisor advises the landowner on the benefits and impact of participating in this program.	<ul style="list-style-type: none"> • advises landowner on how the Ohio AEPP fits with the landowner's financial planning • advises landowner regarding federal tax benefits and consequences, including capital gains, income and estate taxes.

AEPP 2009 Applicant Handbook

Ohio State University Extension	OSU Extension provides general community education in regards to the Ohio AEPP.	<ul style="list-style-type: none"> • responds to general information requests from landowners in regards to the program
Soil and Water Conservation District	The local Soil and Water Conservation District (SWCD) provides technical assistance to the applicant in filling out the application.	<ul style="list-style-type: none"> • can provide an aerial photograph of the application property, showing a one-mile radius • verifies use of best management practices and conservation planning on the application property • approves information within application Steps 17 and 18 which includes: <ul style="list-style-type: none"> ○ total number of acres in agricultural use ○ data on acres considered prime, unique or locally important ○ date and status of conservation and/or nutrient management plan ○ USGS map with 10- foot contours and county tax parcel map ○ coded soils map

Chapter 3: About the Application

The Application Process

Lands Eligible for Purchase of Agricultural Easement

Before Starting the Application

Guidelines and Policies

Ranking System

- **Tier One**
- **Tier Two**

Finalists

Chapter 3: About the Application

The Application Process

Significant program deadlines for 2009 are:

- Jan. 29 through March – Landowner Informational Meetings (check www.agri.ohio.gov for details);
- Feb. 10 – Application opens online;
- Feb. 10 – Local Sponsor Application Review Workshop, 10 a.m. to noon, ODA, Bromfield Building; and
- May 11 at 5 p.m. – Deadline to submit Clean Ohio AEPP applications.

The application will be open and available for applicants for no more than 90 days. During this time, local sponsors are responsible to see that all parts of the application are completed by the appropriate persons or agencies and submitted to the Office of Farmland Preservation by the stated deadline. Incomplete applications or late applications will not be considered.

Complete applications must be received by 1.) electronic submission and 2.) hardcopy on or before the application deadline. The hard copy, consisting of a printout of the application, required attachments and signatures, can be sent by registered or certified mail to the Office of Farmland Preservation by the deadline.

Once applications are received and ranking is complete, landowners will be notified of their standing. Scoring information will be provided online and finalists will be contacted by the ODA staff. Further instructions will be provided once final selections have been made. Once finalists are chosen, it can take on average 12-18 months to close a farm and for the landowner to protect their farm.

Lands Eligible for Purchase of Agricultural Easement

As revealed within the application and the “Guidelines and Policies,” the following requirements must be met in order to apply to the Clean Ohio AEPP:

- The Clean Ohio AEPP accepts farms of 40 acres or more unless the land is located adjacent to property with an agricultural easement. In this case, the land may be a minimum of 25 acres.
- The land must be enrolled in the CAUV program. Agricultural use, according to Section 5713.30 of the Ohio Revised Code, means:

Commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, or was devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of

the federal government.

A farm enrolled in a federal acreage set aside program or federal Conservation Reserve Program (CRP) is considered an agricultural use.

- The land must be enrolled in the Agricultural District Program with the county auditor.
- Counties, townships, municipalities, SWCDs, or charitable organizations must apply on behalf of interested farmland owners.
- The local sponsor must agree and have the financial ability to share monitoring and enforcement responsibilities.
- The farmland owner must certify the property does not contain hazardous substances.
- The farmland owner must have been in compliance with state and federal agricultural laws for the past five years.
- The farmland owner(s) must have possession of clear title to the applicant property.
- The landowner must apply all contiguous property of the same legal interest, including the homestead area. If the landowner would like to submit multiple parcels which are not contiguous, separate applications must be completed.
- Twenty-five percent (minimum) of the points-based appraised value of the agricultural easement must be provided either in cash match by the local sponsor, donation by the landowner, or a combination of donation and cash match.
- The local sponsor must attach a resolution or recorded action of support for the application.

Before Starting the Application

Before starting the somewhat lengthy application, which is comprised of 20 Steps and contains an Attachment Checklist, the following documents can be reviewed to ensure landowner's full understanding and commitment to the program:

- Clean Ohio AEPP Brochure
The brochure provides basic information on the program.
- Sample State Deed
If chosen for funding, this deed will be placed on the property. The landowner should be willing to comply with the deed conditions. Two areas of concern

Chapter 3: About the Application

are homestead areas and new residences and non-agricultural development issues.

- Homestead areas and new residences: ODA will permit one single-family residence per farm to serve the needs of the protected farm. If no housing currently exists on the farm at the time of application, a homestead may be reserved. If housing exists on the property at the time of application, then no additional residences may be built. Any future or existing house on the preserved farm may not be subdivided from it.
- Non-agricultural development: The law requires that the farm shall be retained predominately in agriculture. The word "predominately" allows for some, limited non-farm development to occur on the farm as long as it does not affect the agricultural values or status of the farmland. For example, the following non-farm development activities are generally permitted: (1) a gas or oil well limited to two acres; (2) renting out up to two acres for a telecommunications tower; (3) utilizing an available building for a side business, such as an antique shop; and (4) establishing a corner farmers market. The intent is to keep the bulk of the farmland in agriculture but allow some incidental non-farm development so that the farmland owner can earn some extra income.
- Tier One Estimator
The purpose of this online tool is to provide landowners and local sponsors with an estimate of the total score of the objective Tier One of the 2009 AEPP application before filling out the entire application. To utilize this tool, simply click on the "Tier One Estimator" button under the "Local Sponsor" header on the left menu of the application Web site. This tool is an abbreviated version of the actual application. It uses the Tier One questions from the application to calculate an estimated Tier One score.

ODA's Web site, www.agri.ohio.gov, provides links for the above information.

Guidelines and Policies

Each year guidelines and policies are re-evaluated; therefore, it is important to read them each funding round completely prior to creating an application. A copy of the 2009 Guidelines and Policies is located on ODA's Web site, within the appendix, and below.

- **Complete Application** - Please note that any application will be deemed as incomplete and ineligible for funding if all required information and attachments are not submitted with the application by the above mentioned deadline.
- **Farm** - Each applicant farm must be a minimum of 40 acres unless the land is located adjacent to property with an agricultural easement. In this case, the land may be a minimum of 25 acres. All contiguous parcels owned by the same legal entity must be submitted as one farm. No contiguous parcels can be withheld from the application.

- **Eligibility and Scoring Criteria** - An application property's enrollment in all eligibility criteria (e.g., "Agricultural District" §929 of Ohio Revised Code, "Current Agricultural Use Valuation (CAUV)" § 5713.30 of Ohio Revised Code) must be in place by the May 11, 2009 application deadline. Furthermore, an application property's enrollment or designation in all scoring criteria (e.g., "Agricultural Security Area (ASA)" §931 of Ohio Revised Code, ODA Century Farm, Historical Designation) also must be in place by the May 11, 2009 application deadline.
- **Farmstead Policy** - ODA's 2009 AEPP farmstead policy will permit one single-family residence per farm, to serve the needs of the protected farm, if no housing currently exists on the farm at the time of application. If housing exists on the property at the time of application, then no additional residences may be built. Any future or existing house on the preserved farm may not be subdivided from the farm.
- **Large Farm Exception Policy** - A large farm exception, if approved by the Director, allows the farmland owner to make a one-time split of the property. The exception can be based on either the farm value or the farm size (descriptions below). Because the Director of ODA, at his discretion, shall determine whether to grant this exception, a letter formally requesting the exception must be written to the Director of ODA and the Executive Director of Farmland Preservation. The letter should indicate which exception is requested, include aerial or topo maps distinguishing the property, and associated parcel numbers. The Director's approval must be obtained prior to the submission of the application and a copy of such approval shall be submitted with the other required attachments.
 - Large Farm **Size** Exception: Farms composed of no less than 400 acres may request the one-time option to split the farm into two parcels of approximately equal size. The landowner can then submit half or both halves of the farm.
 - Large Farm **Value** Exception: If the applicant farm's points-based appraisal is more than \$1 million, the landowner may request to sell to ODA an agricultural easement on a portion of the farm.
- **Title and Appraisal Costs** - ODA will initiate a title examination and purchase title insurance. If ODA deems necessary, it will have the land appraised. The costs incurred by ODA for these services will be reimbursed to the department by deducting these costs from the agricultural easement purchase payment.
- **Natural Resources Conservation Service (NRCS) and ODA Cooperation** - In order to receive matching funds from the FRPP, ODA reserves the right to gain additional information about the farm in a timely manner from the

Chapter 3: About the Application

landowner and to seek the approval of NRCS on all Deeds of Agricultural Easement under the 2009 AEPP.

- **Regional Balance** - Regional Balance, as defined in § 901-2-01 of the Ohio Administrative Code, will again be considered in the evaluation of AEPP applications.
- **Funding Caps** - The maximum dollar amount per acre is set at \$2,000 and the total dollar amount per farm is set at \$500,000. There is also a \$500,000 limit per county within this round of funding. No individual will be awarded more than one funded property in this eighth round of funding. The Director also reserves the right to adopt additional guidelines according to OAC 901-2-05 (E).

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 AEPP. For more details see Ohio Revised Code 901.22 and Ohio Administrative Code 901-2. In the Two Tier ranking system, which was developed with stakeholder input, Tier One criteria total 100 possible points and Tier Two totals 50 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.

- **Tier One (100 possible points)**

The Tier One ranking criteria are objective and are measured by local sponsors and other supporting players:

- 1.) **Soil type:** The rules give preference to farms that involve the greatest proportion prime soils, unique or locally important soils, microclimates, or similar features. This information must be provided 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)
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)
- 2.) **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. This information must be provided by the local SWCD or NRCS representative. This section is Step 17 within the application (5 points)
- 3.) **Development pressure:** The rules give preference to land that is 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. This development pressure exists throughout much of Ohio's more rural areas, as well as around major metropolitan areas. This section is Step 13 within the application. (15 points)
 - 4.) **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)
 - 5.) **Other criteria:** The rules allow for the director to determine other preferential criteria for selecting applications. This information has changed over the years but allows for flexibility for unique situations and extension of the program's funds. This section is Step 14 within the application. (29 points)

- **Tier Two (50 possible points)**

After the scores are compiled from the Tier One ranking system, the Farmland Preservation Advisory Board will score either all or a portion of the application's Tier Two questions. This is Step 16 of the application. Each question is worth a possible ten points each.

The questions are designed to give local sponsors and landowners the opportunity to showcase the unique characteristics of the applicant farmland or operation. It is a chance to explain what makes the application special, in ways that might not be evident in the straightforward answers to Tier One questions. Evaluations are based on the thoroughness of responses, not on writing style. The Tier Two questions focus on the following topics:

- 1.) Agricultural infrastructure, support services, and facilities specific to the farm's agricultural activities;
- 2.) Estate, farm succession, and business management plan and other long-term investments made on the farm;
- 3.) Potential for the farm to be a good demonstration or showcase project for the promotion of farmland preservation in Ohio;
- 4.) Public commitments to farmland preservation taken by the local government; and

Chapter 3: About the Application

5.) Examples of sustainable agriculture on the farm.

The Advisory Board's scores are averaged for each narrative into a single score. Advisory board members do not score applications from the county in which they reside nor applications in which they have an interest. Members are given a scoring guide to assist in providing consistent scoring to applications, which is also located in the appendix. To ensure consistent and unbiased scores, narratives remain anonymous throughout the scoring process.

Finalists

When Tier One scores are combined with the Tier Two scores, applicants have the opportunity to earn a maximum of 150 points. From these scores, "regional balance" considerations, and other factors, the Advisory board makes recommendations to the director regarding which farms should be awarded state funds.

"Regional Balance" according to Ohio Administrative Code, Section 901-2 is:

based upon, but not limited to: 1) the number of applications received from a region in proportion to the total number of applications submitted; and 2) The total amount of funds a region has previously received in proportion to the total amount of funds distributed.

Farmland preservation is important to many communities; therefore, starting in 2005, regional balance has been considered in hopes of dispersing funds beyond just a few county borders. Since that time, applications have been regionalized based on the total number of applications submitted. The state was divided into western and eastern regions in the fourth funding round. From 2006-2008, applications were divided amongst four regions.

The director of ODA, with advice from the Advisory Board, will determine program finalists. The maximum state grant under the AEPP is 75 percent of the appraised value of the agricultural easement, capped at \$500,000. Also, the director of ODA has established a cap of \$2,000 per acre. No individual will be awarded more than one funded property in this eighth round of funding. The Director also reserves the right to adopt additional guidelines according to OAC 901-2-05 (E).

Historically, the program receives more than 200 applications each funding round and has been able to provide offers to approximately eight percent of applicants with available funds. It usually takes a few months for staff to review applications and for the advisory board to score and recommend applications to the Director. Finalists are then contacted by ODA staff, if an offer is to be made. Once all offers have been accepted, ODA will announce the funding round complete and mail the results out to all landowners and local sponsors who participated.

Chapter 4: How to Apply

Creating a New Account

Log In and Complete the Application

- **Local Sponsors**
- **SWCD/NRCS**

How to Copy a Previous Year's Application to 2009

Printing the Application

Attachment Checklist

Submitting an Application

Chapter 4: How to Apply

Creating a New Account

To create a new application or to work on one that you've already started, log into one of two accounts on the left margin 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 from a previous year must be used in order to copy information from a previously submitted application. See "How to Copy a Previous Year's Application to 2009" below.

Log In and Complete the Application

- **Local Sponsors**

The Local Sponsor, once logged into the system, will be able to create applications and enter the needed information. Once logged into the system as a Local Sponsor, a "Farm List" will appear, listing all applications that have been started or submitted. If you would like to work on an existing application, select "Edit" next to that farm. If you would like to create an additional application, simply click on "Add a New Farm." Once you have input the new local sponsor information section (Step 2), that same information will automatically appear in all other applications, new and copied, while also allowing the Local Sponsor to edit the information 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 1-20 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.

Once the application has been started, the NRCS/SWCD information can be completed. The local sponsor is responsible for supplying the SWCD/NRCS representative with the needed information (Farm ID, Landowner Last Name, and the Farm Address, County, Township, and Acreage). With this information the SWCD/NRCS representative will have the ability to log into the system and complete Steps 17 and 18 of the application.

When all Steps have been completed, submit the application electronically and print the application, see below.

- **SWCD/NRCS**

After logging into the system, the **SWCD/NRCS** representative will be able to complete Steps 17 and 18 of an application. Once the SWCD/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. To create a new application click on “Add a New Farm.”

To input information for any given farm, the following information, which can be collected from the Local Sponsor, is needed: Farm ID, Landowner Last Name, Farm Address, County, Township, and Acreage. Once Steps 17 and 18 are completed, and the Local Sponsor has completed the remaining steps of the application, the Local Sponsor will have the ability to submit the application electronically and print a copy to gain signatures. The SWCD/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 save only an entirely completed step. The system will not allow a user to submit an application until both the Local Sponsor and SWCD/NRCS have collectively completed Steps 1-20.

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 2009

For Local Sponsors who submitted applications in 2005, 2006, 2007 or 2008 and wish to submit those same farms again in 2009, the application system has been updated to allow Local Sponsors to access applications submitted in previous years. This function is intended to assist the Local Sponsor in submitting a new 2009 application with less effort required to re-enter data from a previous year.

To utilize the data from a previous year’s application, once a Local Sponsor has logged into the system:

- 1.) A “Farm List” will appear listing all applications that you previously submitted
- 2.) Select the desired farm on the list, and click “Copy.”
- 3.) A copy of that farm will appear on the bottom of 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 2009, 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 2009 AEPP applications are subject to the same requirements, regardless of whether information was duplicated from previous

Chapter 4: How to Apply

applications. Information such as tax records, local resolutions of support, and CAUV tax records should be updated for the 2009 funding round.

Printing the Application

To print a **blank application** click on the “Print Blank Application” button under the “Local Sponsor” header on the left menu of the screen. This will print all steps of a blank application.

In order to print a **complete application**, the Local Sponsor must “Submit” the application. To submit and print, Steps 1-18 must be completed by the appropriate parties.

- 1.) The Local Sponsor will need to log in
- 2.) Click on Step 19: Points Based Appraisal, located on the left sidebar
- 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.

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.

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 at the request of the ORC in order to provide enough information to understand and certify the characteristics of the farm. The items are listed below:

- 1.) Attachment A: Resolution(s)
 - a. A resolution or ordinance from the political subdivision or a recorded action from a soil and water conservation district or charitable organization is required. The resolution must support the landowner’s application, certify the availability of matching funds (if applicable), and agree to monitor, supervise and enforce the deed of agricultural easement on behalf of the director. A sample resolution is found in the appendix. It is merely a suggestion and the applicant is free to craft his or her own version. However, it is important that a resolution contain at least the following:
 - i. A statement indicating that the entity has reviewed this request and supports the nomination of the property for purchase of an agricultural easement, and if applicable, the property is located within an area designated for farmland preservation in a local long

- range comprehensive plan.
 - ii. The entity indicates that they plan to provide the minimum 25 percent local match required or the landowner commits to donate at least 25 percent of the appraised value of the agricultural easement to be eligible to receive the state grant. The match or donation can also be a combination of these choices which add up to a minimum value of 25 percent of the points-based appraised value.
 - iii. If the local government unit is providing a local match in cash, it should identify the amount and source of the money.
 - b. A resolution passed at a public meeting or hearing can fulfill requirements for a public hearing with regard to spending Clean Ohio dollars. It is acceptable for a governing body to pass one resolution in support of multiple applications as long as the details specified above are outlined for each of the applicants.
 - c. A copy of this resolution must be sent to the other local governing body or bodies (county, township, or SWCD) to give it/them an opportunity to comment upon the resolution.
- 2.) Attachment B: Plat Map
An 8 1/2 x 11 inch plat map or other map showing the following:
- a. Name of the landowner(s),
 - b. Parcel number(s) for the entire farm,
 - c. Delineated homestead area, and
 - d. Homestead perimeter clearly indicated in feet
- 3.) Attachment C: Tax Records
County Auditor tax records of the applicant farm's land values used in responding to Step 7 of this application, e.g., the real estate taxes and assessments (tax bill), or other real property records.
- 4.) Attachment D: Map of the Applicant Farm
An 8 1/2 by 11 inch map, sketch or aerial photo which shows all information claimed in Steps 12 and 13. This includes, but is not limited to the proximity of the application farm from any protected properties(easement and non-easement), to neighboring applicant farms, sewer and water lines, accessible public roadway intersection(s), and the total road frontage of the farm.
- 5.) Attachment E: Soils Map
An 8 1/2 by 11 inch soils map and soils legend with the farm's outer boundary outlined.
- 6.) Attachment F: Historical Designation
For land or structures that have been historically designated, attach written verification from the respective designating authority confirming that the land or building is significant and when it was designated as such.
- 7.) Attachment G (if applicable): Corporations, Partnerships, and Trusts
- a. A copy of incorporation papers, and
 - b. Certificate of authorization that the individual is authorized to act on behalf of the Corporation, Partnership, or Trust.
- 8.) Attachment H (if applicable): Non-Profit Organizations
The Ohio Department of Agriculture may ask a non-profit organization for the

Chapter 4: How to Apply

following additional information:

- a. IRS tax exemption,
 - b. A copy of by-laws showing that the non-profit organization's mission includes farmland preservation,
 - c. A list of officers, board of directors, and members
 - d. Financial statements,
 - e. Stewardship endowment policy, and
 - f. Documentation showing the non-profit organization's ability to hold, monitor, and enforce an agricultural easement in perpetuity.
- 9.) Attachment I: ASA Enrollment Verification(if applicable) - attach resolution
 - 10.) Attachment J: Any Other Relevant Information, such as the (optional) Large Farm Exception Letter

Submitting an Application

Applications must be complete and turned in prior to the deadline or they will be ineligible for funding. All applications must be received by electronic submission and hardcopy on or before **5 p.m. on Monday, May 11, 2009**. The hard copy, consisting of a signed printout of the application with required signatures and attachments, can be sent via registered or certified mail to the Office of Farmland Preservation (address below) by the deadline. Before mailing, you may want to make a copy of the completed application form to keep for your personal records.

Ohio Department of Agriculture
Office of Farmland Preservation
8995 East Main Street
Reynoldsburg, OH 43068

Chapter 5: 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 applicants use to provide a match?
15. What is the difference between 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?

Chapter 5: Frequently Asked Questions

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 gives up 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).

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

Ohio law states that agricultural easements purchased with state money through the Clean Ohio AEPP 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. There is an extinguishment clause within the deed but the purpose of the agricultural easement is that the land remains in agricultural activity permanently.

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 of the agricultural easement. The landowner will enter into a Deed of Agricultural Easement, which will address in detail specific improvements or building construction that are permissible, that require permission of the holder, or that are prohibited. A sample of this deed can be found in the appendix.

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 does not affect the landowner or the tenant's eligibility for the program. The state and local holders of the 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 Deed of 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; it merely conveys the right to develop the land for non-agricultural uses. The landowner still owns the land and may sell, transfer or bequeath the land.

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 Deed of Agricultural Easement. 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.

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 AEPP 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

Chapter 5: Frequently Asked Questions

rights are purchased. The agricultural easement travels with the land, so the new owner and all subsequent owners must abide by the terms of the Deed of Agricultural Easement.

14. What sources of funding can local applicants use to provide a match?

The local applicant 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.

The local applicant may also pursue the federal matching program known as the FRPP. This program is available through the USDA, NRCS. In addition, the local applicant 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 solely to be used for the purchase of agricultural easements.

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

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 Deed of 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 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.

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 local sponsor is legally obligated to carry out the terms and conditions of the Deed of 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.

In addition, 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.

Chapter 6: Appendix

2009 Guidelines and Policies

Advisory Board Scoring Guide

Sample Resolution

Sample Deed of Agricultural Easement

Clean Ohio Agricultural Easement Purchase Program

2009 Guidelines and Policies

Ohio Department of Agriculture (ODA)
Office of Farmland Preservation
Opening: February 10, 2009
Deadline: May 11, 2009 at 5 p.m.

The Ohio Department of Agriculture's Office of Farmland Preservation anticipates distributing \$6.25 million in the eighth funding round of the Clean Ohio Agricultural Easement Purchase Program (AEPP). The funds will be used to purchase agricultural easements from Ohio farmland owners. All applications must be received by electronic submission AND hardcopy on or before **5 p.m. on Monday, May 11, 2009**. The hard copy, consisting of a signed printout of the application with required attachments, can be sent by registered or certified mail to the Office of Farmland Preservation by the deadline.

In addition to reading through the following 2009 Guidelines and Policies, please review the following documents and share them with the farmland owner:

- Sample Deed of Agricultural Easement
- Clean Ohio AEPP Brochure and Fact Sheet
- ORC Chapter 901.22 and OAC Chapter 901-2

2009 Clean Ohio AEPP policies are listed below:

Complete Application - Please note that any application will be deemed as incomplete and ineligible for funding if all required information and attachments are not submitted with the application by the above mentioned deadline.

Farm – Each applicant farm must be a minimum of 40 acres. All contiguous parcels owned by the same legal entity must be submitted as one farm. No contiguous parcels can be withheld from the application.

Eligibility and Scoring Criteria -An application property's enrollment in all eligibility criteria (e.g., "Agricultural District" §929 of Ohio Revised Code, "Current Agricultural Use Valuation (CAUV)" § 5713.30 of Ohio Revised Code) must be in place by the May 11, 2009 application deadline. Furthermore, an application property's enrollment or designation in all scoring criteria (e.g., "Agricultural Security Area (ASA)" §931 of Ohio Revised Code, ODA Century Farm, Historical Designation) also must be in place by the May 11, 2009 application deadline.

Farmstead Policy - ODA's 2009 AEPP farmstead policy will permit one single-family residence per farm, to serve the needs of the protected farm, if no housing currently exists on the farm at the time of application. If housing exists on the property at the time of application, then no additional residences may be built. Any future or existing house on the preserved farm may not be subdivided from the farm.

Large Farm Exception Policy - A large farm exception, if approved by the Director, allows the farmland owner to make a one-time split of the property. The exception can be based on either the farm value or the farm size (descriptions below). Because the Director of ODA, at his discretion, shall determine whether to grant this exception, a letter formally requesting the exception must be written to the Director of ODA and the Executive Director of Farmland Preservation. The letter should indicate which exception is requested, include aerial or topo maps distinguishing the property, and associated parcel numbers. The Director's approval must be obtained prior to the submission of the application and a copy of such approval shall be submitted with the other required attachments.

- **Large Farm Size Exception:** Farms composed of no less than 400 acres may request the one-time option to split the farm into two parcels of approximately equal size. The landowner can then submit half or both halves of the farm.
- **Large Farm Value Exception:** If the applicant farm's points-based appraisal is more than \$1 million, the landowner may request to sell to ODA an agricultural easement on a portion of the farm.

Title and Appraisal Costs - ODA will initiate a title examination and purchase title insurance. If ODA deems necessary, it will have the land appraised. The costs incurred by ODA for these services will be reimbursed to the department by deducting these costs from the agricultural easement purchase payment.

Natural Resources Conservation Service (NRCS) and ODA Cooperation - In order to receive matching funds from the Farmland Protection Program, ODA reserves the right to gain additional information about the farm in a timely manner from the landowner and to seek the approval of NRCS on all Deeds of Agricultural Easement under the 2009 AEPP.

Regional Balance - Regional Balance, as defined in § 901-2-01 of the Ohio Administrative Code, will again be considered in the evaluation of AEPP applications.

Funding Caps – The maximum dollar amount per acre is set at \$2,000 and the total dollar amount per farm is set at \$500,000. There is also a \$500,000 limit per county within this round of funding. No individual will be awarded more than one funded property in this eighth round of funding. The Director also reserves the right to adopt additional guidelines according to OAC 901-2-05 (E).

Clean Ohio AEPP Advisory Board Scoring Guide

Role of Farmland Preservation Advisory Board

In order to evaluate the five essay questions within the Tier II portion of the ranking system, a Farmland Preservation Advisory Board was established. The Advisory Board's charge is to: 1.) analyze and score the AEPP essay portion of the applications, and 2.) present recommendations for funding to Ohio Agriculture Director Robert J. Boggs. *Please see Ohio Revised Code 901.23.*

While the Director will make the final allocation decisions, the role of the Advisory Board is a vital component to the decision-making process.

There are five Tier II essay questions which summarize both the landowners' and local governments' investment in the economic, social and agricultural framework. The Advisory Board reviews these essays and designates a score based upon the information provided. The narratives will vary greatly throughout the state; however, there are certain characteristics differentiating applicants. The Clean Ohio AEPP scoring methodology is intended to assist in providing a framework for decision-making regarding the selection of applications for funding.

Tier II is a qualitative measuring of the following five areas:

- Agricultural infrastructure, support services, and facilities specific to the farm's agricultural activities.
- Estate, farm succession and business management plan and other long-term investments made on the farm.
- Potential for the farm to be a good demonstration or showcase project for the promotion of farmland preservation in Ohio.
- Public commitments to farmland preservation taken by the local government.
- Examples of sustainable agriculture on the farm.

Each of these topics is worth up to 10 points each and applicants have the ability to use a maximum of 1300 characters to discuss each subject. The application describes this section to the applicants as follows:

"These questions are designed to give you the opportunity to showcase the unique characteristics of your land or operation. It is a chance for you to explain what makes your application special (in ways that might not be evident in the straightforward answers to Tier I questions). Evaluations are based on the thoroughness of your responses, NOT on writing style."

Advisory Board Member's Role

Your role as an Advisory Board member is to provide a neutral and consistent ranking to the essay portion of the AEPP application. Please do not score any applications from

your county, sponsored by an organization of which you are a member, or a property of which you may have an ownership interest.

On each application that will be scored, the landowner's name and personal information will be eliminated from the essay portions that you will be assessing, and only the county and acreage will be revealed. Because there is a large volume of responses to be read, 30 of the highest Tier I applicants will be provided to you prior to the advisory board meeting. Please read and score these applications, using the attached score sheets, prior to the Wednesday, June, 18 meeting and bring the completed applications with you to the meeting.

Do not hesitate to contact Kristen Jensen, Program Manager with any questions or concerns, 614-728-4203 or kjensen@agri.ohio.gov.

Clean Ohio AEPP Scoring Methodology

As a reminder, the scoring methodology attached is offered to assist you in developing a framework for evaluating the five Tier II questions of each AEPP application and to allow for a consistency across all members' scoring. Each question is below as it appears on the application along with a general guideline for scoring.

16A: Provide some specific information about the property in this application. In particular, list or describe: (1) the kinds of agricultural activities conducted on the property; (2) the essential agricultural support services and facilities used in the operation; and, (3) the distance of those essential support services and facilities from the property. *(Maximum Points = 10.0)*

CRITERIA	STRONG RESPONSE (10-8 POINTS) Strong response in all areas	AVERAGE RESPONSE (7-4 POINTS) At least one of the factors is avg or above	WEAK RESPONSE (3-0 POINTS) All of the factors are weak or unresponsive
AGRICULTURAL ACTIVITIES (max of 4 points)	Give detail on agricultural activities, that includes information on livestock and crops; Information on the operation in terms of economic impact	Mentions some activities on the farm, but gives little or no detail regarding the operation	Vague on the types of agricultural activities conducted on the farm
AGRICULTURAL SUPPORT SERVICES AND FACILITIES (max of 3 points)	Gives detail on agricultural support services that the farm utilizes, identifies each type of entity; the number of services for the county which is an important factor that indicates the stability, success and ultimately longevity of the agricultural infrastructure for that farm.	Mentions some agricultural support services and facilities but gives little detail on the variety within the region	Unresponsive to question and provides little detail.
PROXIMITY (max of 3 points)	List of a variety of support services and facilities, complete with distances; Close proximity to the farm indicating less than 10 miles.	Lists services and facilities, lists proximities which are beyond 10 miles.	Lists a few support services and facilities, but not a variety within the county; does not list proximity measurements.

16B: Discuss the management and future of the property in this application. In particular, describe: (1) what sort of estate plan is in effect for the property; (2) what sort of business plan is there for the operation of the farm; and, (3) what, if any, long-term investments have been made on the property. *(Maximum Points = 10.0)*

CRITERIA	STRONG RESPONSE (10-8 POINTS) Strong response in all areas	AVERAGE RESPONSE (7-4 POINTS) At least one of the factors is avg or above	WEAK RESPONSE (3-0 POINTS) All of the factors are weak or unresponsive
ESTATE PLAN (max of 4 points)	Give detail on an existing will or trust, that includes information on beneficiaries, line of succession for farm, or trustee duties, showing strong evidence farming will continue after death of owners; Information on the operation of will or trust is helpful to determine whether adequate steps have been taken to ensure farm's future and intent that farm be tended in the future.	Mentions will or trust or intent to create will or trust, but gives little or no detail regarding beneficiaries, succession of farm, or trustee duties.	Does not mention will or trust, existing or intent to create; No documented plan for future succession of farm or what is to happen with farm. Answers that indicate intent for farm to go to son or daughter, for example, without documentation or detail; Unresponsive to question.
BUSINESS PLAN (max of 3 points)	Gives detail on operation, management structure, and if the farm is incorporated, what type of entity; Entity structure and management/structure/duties are all important factors that indicate the stability, success and ultimately longevity of the farm.	Mentions how it is incorporated but gives little detail on management structure, type of entity, etc.	No-plan or mentions plan in passing with no detail; Unresponsive to question.
LONG-TERM INVESTMENTS (max of 3 points)	List of capital improvements, new equipment purchases, land or infrastructure purchase or improvements, complete with cost amounts; Other improvements to the farm or land that indicate a firm, long-term monetary commitment to the farm.	Lists some improvements or purchases, but does not necessarily list costs or indicate when such purchases were made; Plans for future investments are not an indication of what has actually been invested in the farm.	No improvement mentioned or lists a few improvements, but no cost amount or time when purchased; Statements about what owner would like to do with farm infrastructure or intends to do with farm; Unresponsive to question.

16C: (1) What makes the property in this application a good showcase for the promotion of farmland preservation in Ohio? (2) List ideas for making this property a better showcase. (3) Describe any awards received in these areas, if any. (*Maximum Points = 10.0*)

CRITERIA	STRONG RESPONSE (10-8 POINTS) Strong response in all areas	AVERAGE RESPONSE (7-4 POINTS) At least one of the factors is avg or above	WEAK RESPONSE (3-0 POINTS) All of the factors are weak or unresponsive
DEMONSTRATION OR SHOWCASE PROJECT (max of 5 points)	Gives details on present activities regarding the demonstration or showcase of agricultural operation to a variety of audiences, shows strong evidence of community involvement regarding the promotion of agriculture	Applicant provides a few or vague examples of how the farm is a good demonstration or showcase project	Applicant does not provide any examples of how the farm has been a demonstration project in the past or present of farmland preservation
IDEAS TO IMPROVE DEMONSTRATION (max of 3 points)	Gives details on potential activities and ideas regarding the demonstration or showcase of agricultural operation to a variety of audiences, shows strong evidence of community involvement regarding the promotion of agriculture	Applicant provides a few or vague examples of how the farm could be a good demonstration or showcase project in the future	Applicant does not provide any examples of how the farm could become a demonstration or showcase project of farmland preservation
AWARDS (max of 2 points)	Provides detailed information on nominated or received awards reflecting a good showcase for the promotion of farmland preservation in Ohio	Provides some or vague information on nominated or received awards reflecting a good showcase for the promotion of farmland preservation in Ohio	Does not provide any information on nominated or received awards reflecting a good showcase for the promotion of farmland preservation in Ohio

16D: What has your local government(s) done to (1) establish an agricultural preservation board; (2) fund an office of farmland preservation; (3) provide steady revenue to purchase agricultural easements; (4) create or support a land trust; or, (5) demonstrate other public commitment to farmland preservation. (Maximum Points = 10.0)

CRITERIA	STRONG RESPONSE (10-8 POINTS) Strong response in all areas	AVERAGE RESPONSE (7-4 POINTS) At least one of the factors is avg or above	WEAK RESPONSE (3-0 POINTS) All of the factors are weak or unresponsive
CREATE A AGRICULTURAL PRESERVATION BOARD or OFFICE FOR FARMLAND PRESERVATION (max of 4 points)	Gives detail on an existing local governmental actions, creation of a agricultural preservation board and office/personnel dedicated to farmland preservation; adequate steps have been taken to ensure the agricultural infrastructure and landowners are intended to be part of the county's land use and economic future.	Mentions some governmental actions regarding farmland preservation, such as the creation of a farmland preservation task force report, or personnel dedicated to farmland preservation but gives little or no detail regarding other governmental actions.	No documented farmland preservation board or government personnel dedicated to farmland preservation efforts; answers indicate no intention by the elected officials to protect the agricultural infrastructure; Unresponsive to question.
ESTABLISHMENT OF A REVENUE STREAM (max of 3 points)	Gives detail on the establishment of a revenue stream; Entity structure and management/structure/policies are all important factors that indicate the stability, long-range goals of the program.	Mentions attempts at establishment of a revenue stream.	No revenue stream in the county or region.
CREATION/SUPPORT OF A LAND TRUST (max of 3 points)	Details creation or support of local land trust within county or region; identifies number of easements held or commitment as a local sponsor towards application.	Intent to create or support a land trust, but gives little or no detail regarding timeline for establishment.	No established land trust in the area; no private commitment towards farmland improvements; Unresponsive to question.

16E: Explain the ways in which the property in this application demonstrates sustainable agriculture. List all programs (governmental or your own) you have entered into to address the following:(1) soil erosion, (2) water quality, (3) wetland protection/restoration, and, (4) wildlife habitat enhancement.(Maximum Points = 10.0)

CRITERIA	STRONG RESPONSE (10-8 POINTS) Strong response in all areas	AVERAGE RESPONSE (7-4 POINTS) At least one of the factors is avg or above	WEAK RESPONSE (3-0 POINTS) All of the factors are weak or unresponsive
ADDRESS <ul style="list-style-type: none"> • SOIL EROSION • WATER QUALITY • WETLAND PROTECTION/RESORATION • WILDLIFE HABITAT ENFORCEMENT (max of 10 points)	Applicant provides evidence of addressing all four mentioned resource concerns positively if the issues apply. (Example: wetlands may not apply)	Applicant provides evidence of addressing at least two of the four mentioned resource concerns if applicable.	Applicant provides at least one of the four mentioned resource concerns if applicable.

YOUR NAME OR ORGANIZATION

AVE

STREET ADDRESS | CITY STATE ZIP | PHONE: 509.333.4444 | FAX: 509.333.5555
you@somewhere.com | www.somewhere.com

Board of Trustees
Your Township, Your County, Ohio Department of Agriculture

Resolution No. ##-##

A RESOLUTION to the extent permitted by law, Authorizing Participation in Ohio Agricultural Easement Purchase Program.

The Board of Trustees of Your Township, Your County, Ohio met in a regular session on the ## day of MONTH, 2009 at the office of the Board of Trustees of Your Township, Your County, Ohio at 123 Main Street, Your Town, Ohio ##### with the following members present:

- Board Member 1
- Board Member 2
- Board Member 3

Mr. Board Member 1 moved for adoption of the following Resolution:

WHEREAS, on ## day of MONTH, 2009 the Your Township Trustees, Your County, received a request from John A. and Mary B. Landowner for support of their application to the State of Ohio for purchase of an agricultural easement on the property located at 45678 County Road; Your City, Ohio #####.

WHEREAS, the Your Township Trustees, Your County, has reviewed this request for support and determined that the nomination of the property for purchase of an agricultural easement is compatible with the long-range goals of the local government area regarding farmland preservation, and agrees to co-hold, monitor and enforce the terms of the easement; and,

WHEREAS, the Your Township Trustees, Your County, find the request for the agricultural easement acceptable; and,

WHEREAS, the landowner commits to donating at least 25% of the agricultural easement value; and,

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Your Township, Your County.

Ms. Board Member 3 seconded the motion and the role was called on the question of its adoption. The vote was as follows:

Resolution No. ##-##

ROLL CALL VOTE:

<u>Name</u>	<u>Vote</u>	<u>Initials</u>
Board Member 1	Yes ___ No ___;	_____
Board Member 2	Yes ___ No ___;	_____
Board Member 3	Yes ___ No ___;	_____

Board Member 1, President

Board Member 2, Vice-President

Board Member 3, Trustee

Adopted on the ## day of MONTH, 2009

ATTEST: _____
Clerk Name, Clerk Title
Your Township
Your County, Ohio

OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM

Deed of Agricultural Easement

State of Ohio

This Deed of Agricultural Easement (hereinafter referred to as the "Easement") dated as of _____, 2008, is made and entered into by and between (INSERT LANDOWNER NAME(s)), located at (INSERT ADDRESS), (hereinafter referred to as the "Grantor"), and the State of Ohio on behalf of the Director of the Ohio Department of Agriculture, 8995 East Main Street, Reynoldsburg, Ohio, 43068, (hereinafter referred to as the "State Grantee"), along with the (INSERT SPONSOR NAME) in (INSERT COUNTY) County, Ohio, (hereinafter referred to as the "Local Grantee"). Both the State Grantee and the Local Grantee listed above are hereinafter collectively referred to as the "Grantee," except when otherwise specified as the "State Grantee" or the "Local Grantee."

This is an agreement for the sale and purchase of an agricultural easement and the monitoring and enforcement of the Easement. Specifically, the State Grantee agrees to purchase the Easement from the Grantor for \$00,000.00 (INSERT DOLLAR AMOUNT). In addition, the Local Grantee agrees to monitor the property in perpetuity. The following provisions apply to this Easement:

A. Protected Property

Whereas, the Grantor is the owner in fee simple of approximately (INSERT NUMBER OF ACRES) acres of certain agricultural property located at (INSERT ADDRESS), (INSERT TOWNSHIP), (INSERT COUNTY), (hereinafter referred to as the "Protected Property") more fully described on Exhibit A attached hereto and over which this Easement attaches. The Grantor has full authority to sell this Easement and has a good and indefeasible fee simple title to the land described in Exhibit A which is free and clear of all liens and encumbrances not conducive to agriculture.

B. Agricultural Value and Use

In particular, the Protected Property consists of land devoted exclusively to agricultural use as defined by Section 5713.30 of the Ohio Revised Code and is valued for real

property taxation at its current value for agricultural uses under Section 5713.31 of the Ohio Revised Code, or that constitutes a homestead as defined by Section 901.21(A)(3) of the Ohio Revised Code. The Grantor has an interest in preserving the Protected Property for agricultural use.

C. Agricultural Practices

Grantor shall conduct all farming operations on the Protected Property in a manner consistent with a conservation plan ("Conservation Plan") prepared in consultation with the United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") and approved by the local Soil and Water Conservation District. The Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12. The Conservation Plan shall be updated as needed, and in any event at the time the basic type of agricultural operation on the Protected Property changes or at the time ownership of the Protected Property changes. All farming operations shall be conducted in accordance with all applicable local, state and federal laws and regulations.

D. Qualified Organization

The Local Grantee is a qualified organization under Section 170 of the Internal Revenue Code, as amended from time to time, and under the regulations promulgated thereunder to receive conservation easements. Further, the State Grantee is authorized pursuant to Section 901.21 of the Ohio Revised Code to hold agricultural easements under the laws of the State of Ohio for the public purpose of retaining the Protected Property predominantly in agriculture.

Purchase of Agricultural Easement

Now, therefore, in consideration of the mutual promises, conditions, restrictions and obligations contained herein pursuant to the laws of the State of Ohio, Grantor grants with general warranty covenants to the Grantee a perpetual agricultural easement as defined in Section 5301.67(C) of the Ohio Revised Code, on the Protected Property. The Grantee has the authority to accept agricultural easements pursuant to Section 901.21(A) of the Ohio Revised Code. The Easement is subject to the following terms and conditions:

1. **Statement of Purpose**

It is the purpose of this Easement to assure that the Protected Property will be retained predominantly in agricultural use as defined by Section 5713.30 of the Ohio Revised Code and will be valued for real property taxation at its current value for agricultural uses under Section 5713 of the Ohio Revised Code, and to preserve and protect the Protected Property's agricultural soils (as identified on Exhibit B – Present Condition Report) and viability through a perpetual restriction on the use of the Protected Property. The Grantor covenants that the Protected Property shall remain available for agriculture in perpetuity.

2. **State Agricultural Conservation Policy**

2.1 State Farmland Preservation Programs - The United States Department of Agriculture's 2002 Census of Agriculture found that from 1950 to 2002 Ohio has lost 1/3 of its total agricultural lands. The State of Ohio has a clearly delineated conservation policy to preserve and promote agriculture and agricultural land for a significant public benefit. The Ohio Department of Agriculture is charged with the responsibility of protecting and promoting agriculture, including the preservation of Ohio's farmland by accepting agricultural easements in accordance with Section 901.21(B) of the Ohio Revised Code. By granting and accepting an agricultural easement over the Protected Property the Grantor and Grantee are furthering the State of Ohio's conservation policy to preserve and protect viable agricultural land. The Grantor intends that this Easement will confine the use of Protected Property, in perpetuity, to activities that are consistent with the purposes of the Easement. Ohio's policy to preserve and promote agriculture and agricultural land is further reflected in the enactment of the previously mentioned Section 901.21 and Section 901.22 of the Ohio Revised Code which allows, inter alia, the Director of the Ohio Department of Agriculture to acquire agricultural easements by gift, devise or bequest and to establish a procedure for awarding matching grants for the purchase of agricultural easements and provides that the Director shall monitor Ohio's agricultural easement program to evaluate its effectiveness and efficiency as a farmland preservation tool. Additionally, this policy is reflected in Section 901.54 of the Ohio Revised Code, which creates the Office of Farmland Preservation within the Ohio Department of Agriculture to actively

preserve farmland and encourage and assist others in doing so. The grant of this agricultural easement is exclusively for the "conservation purpose" as that term is described in Section 170(h)(4)(A)(iii) of the Internal Revenue Code, which encourages the preservation of open space, including farmland and forest land.

3. Present Condition Report

The Grantor and Grantee agree that the natural characteristics, the soil types, the physical conditions, the physical structures, and the agricultural use of the Protected Property at the time of this purchase are documented in a Present Condition Report (hereinafter referred to as the "Report") prepared by the Local Grantee and signed and acknowledged by the Grantor and a representative of the Local Grantee establishing the condition of the Protected Property at the time of this Easement conveyance, including photographs, maps and other documents, as set forth in Exhibit B.

4. Prohibited Uses/Restrictions

Any activity on or use of the Protected Property inconsistent with the purposes of this Easement is prohibited. The following activities are expressly prohibited, except as provided in Paragraph 5 below:

4.1 Industrial or Commercial Activity - There shall be no industrial or commercial activity undertaken or allowed on the Protected Property, except as provided for in Paragraph 5 below. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

4.2 Structures - There shall be no new structures or placing of any dwelling, building, athletic or recreational structure, landing strip, helicopter pad, fence or sign (other than those signs permitted, required or allowed by the Grantee for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, telecommunication tower, tower, conduit line, or any other temporary or permanent structure or facility on the Protected Property, except as provided in Paragraph 5 below.

- 4.3 Agricultural Subdivision** - The legal subdivision of the Protected Property, recording of a subdivision plan, partition, or any other division of the Protected Property into two or more parcels, is prohibited, except a subdivision of the Protected Property is permitted only with the advance written permission of the State Grantee, who agrees that each separated parcel can stand alone as viable agricultural land. This prohibition applies regardless of how many separately described parcels are contained in the legal description attached as Exhibit A. If a Homestead Area exists or is ever established, which includes the residential dwelling and agricultural buildings as shown on Exhibit B, it shall not be subdivided and shall remain a part of the Protected Property. In the event of subdivision, the terms of this easement shall be conveyed and recorded with the separate deeds.
- 4.4 Mining** - Under no circumstances shall surface mining be permitted on the Protected Property. To the extent permitted under Section 170(h)(5) of the Internal Revenue Service Code and applicable Treasury Regulations, Grantor may undertake subsurface exploration, development and extraction of oil and gas. Upon completion of the subsurface oil and gas well activities, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement of the subsurface oil and gas well activities. In addition, and to the extent permitted under Section 170(h)(5) of the Internal Revenue Service Code and applicable Treasury Regulations, Grantor may remove sand and gravel for normal farm use on the Protected Property. However, such removal is to be limited and located in such a manner so as to minimize the impact to prime and unique soils.
- 4.5 Topography** - There shall be no ditching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner, unless in accordance with the farm conservation plan for agricultural use on the Protected Property referenced in Paragraph C above.

- 4.6 **Water** - Grantor shall not transfer, encumber, lease, sell, or otherwise separate such water rights from title to the Protected Property itself.
- 4.7 **Dumping** - There shall be no new dumping of trash, non-compostable garbage, hazardous or toxic substances or other unsightly or offensive material, except as reasonably required for the use of the Protected Property in accordance with applicable local, state and federal laws and regulations.
- 4.8 **Roads** - There shall be no building of new roads, parking lots, or other paved surfaces, or the widening of existing such surfaces, except on the Homestead Area, local or state highway rights-of-way, and those improvements permitted under 5.12 below.

5. **Grantor's Reserved Rights**

The Grantor reserves for himself, his heirs, successors and assigns, all rights and privileges of ownership of the Protected Property and the right to use the Protected Property for all purposes that are not inconsistent with the purpose of this Easement and not expressly prohibited by this Easement. The following rights are expressly reserved by the Grantor:

- 5.1 **Conveyance** - Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee in accordance with Paragraph 21 below.
- 5.2 **Right to Farm** - Grantor retains the right to farm, or to permit others to farm, in accordance with applicable local, state and federal laws and regulations and the conservation plan identified in Paragraph C above.
- 5.3 **Agricultural Education Programs** - As a part of the agricultural activities of the farm, the Grantor reserves the right to conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Protected Property for the purpose of teaching about agricultural

practices and promoting awareness of agriculture as long as it does not affect the agricultural values or status of the Protected Property.

- 5.4 Right to Privacy** - Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. Notwithstanding this provision, Grantee and/or its successors and assigns shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Paragraph C above and Paragraph 8.3 below.
- 5.5 Right to use the Protected Property for Customary Rural Enterprises** - Grantor retains the right to use the Protected Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products primarily produced on the Protected Property; farm machinery repair; roadside market stands; and riding stables so long as these uses do not adversely affect the soils or agricultural values of the Protected Property.
- 5.6 Fences** - Existing fences may be cleared, repaired and replaced, and new fences may be built on the Protected Property for purposes of preventing trespass and reasonable and customary management of livestock and wildlife, without any further permission of the Grantee.

CHOOSE ONE

- 5.7 Existing Residence** - There is no existing residence on the Protected Property.
- 5.7 Existing Residence** - Grantor may improve, maintain, repair, replace, and restore the existing single-family residence and residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires in substantially their same locations within the existing (INSERT ACRES) acre "Homestead Area" shown on the Report, and located at (INSERT PROPERTY ADDRESS).
- 5.8 Agricultural Structures and Improvements** - Certain agricultural structures and improvements exist on the Protected Property and are depicted and

described in the Report. The existing agricultural structures and improvements may be repaired, enlarged and replaced at their current locations as shown on the Report, without any further permission from the Grantee. New buildings and other structures and improvements to be used predominantly for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property, but not including any residence, dwelling or farm labor housing, may be built on the Protected Property without any further permission of the Grantee. However, such construction shall be necessary for the operations and shall be sited so as to minimize impact to prime and unique soils.

5.9 Recreational Improvements

5.9.1 Existing Recreational Improvements – Certain recreational improvements exist on the Protected Property and are depicted and described in the Report. Recreational Improvements means non-commercial amenities designed for the personal recreational use and enjoyment of Grantor and Grantor’s invitees. All of the Existing Recreational Improvements may be repaired or replaced at their current location without further permission of Grantee. Any of the Existing Recreational Improvements which are located within the Homestead Area may be reasonably enlarged without permission of Grantee so long as they remain within the Homestead Area. Any of the Existing Recreational Improvements which are located outside the Homestead Area may be enlarged only with the advance written permission of the State Grantee.

5.9.2 New Recreational Improvements – New Recreational Improvements may be constructed within the Homestead Area without further permission of Grantee. New Recreational Improvements may be constructed outside the Homestead Area only with the advance written permission of the State Grantee.

5.10 No Commercial Recreational Use – There shall be no commercial recreational use of the Protected Property except (i) those uses considered “de minimus” according to the provisions of Section 2031 (c)(8)(B) of the Internal Revenue

Code, as amended and (ii) those uses to which State Grantee consents after a determination that they are consistent with the goals of the Ohio Agricultural Easement Purchase program and the soil conservation purpose of this Easement.

- 5.11 Utility Services and Septic Systems** - Except for wind energy facilities as provided in Section 5.11.1 below, installation, maintenance, repair, replacement, removal and relocation of electric, gas, geothermal, water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property and the right to grant easements over and under the Protected Property for such purposes, is permitted without further permission of the Grantee, provided that such utility improvements are limited to the sole purpose of providing electrical, gas, water, sewer, or other utilities to serve only the Protected Property and improvements permitted in this Easement. Utility improvements that provide service beyond the Protected Property are not permitted.

Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement or the construction of septic or other underground sanitary system for the benefit of any of the permitted improvements is permitted without further approval of the Grantee.

5.11.1 Wind Energy - To promote the use of renewable energy sources, Grantor may, only with prior written approval of the State Grantee, add one wind turbine on the Protected Property. Such wind turbine must be built and maintained in accordance with any local zoning ordinance and applicable Ohio and Federal law, including but not limited to the regulations of the Public Utilities Commission of Ohio and the Federal Energy Regulatory Commission.

The wind turbine, access roads, and any other related improvements shall be situated, constructed, and maintained pursuant to a plan approved by the State Grantee in its sole discretion. Such plan shall be designed to comport with the

purposes of this Easement, minimize adverse effects on soils and the agricultural value of the Protected Property, and be in accordance with the terms and conditions set forth in this Easement.

5.12 Paving and Road Construction - Construction of new roads, parking lots, or other paved surfaces, or the widening of existing such surfaces, are permitted outside the Homestead Area consistent with the agricultural purposes of this Easement with the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantee determines that the proposed paving or covering of the soil, or the location of any such road, will not substantially diminish or impair the agricultural values of the Protected Property and will be used for agricultural purposes.

5.13 Water - Grantor shall retain and reserve the right to use any appurtenant water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property.

CHOOSE ONE

5.14 New Residence - Notwithstanding any other provision herein but subject to the requirements of this Paragraph 5.14, no new residence, dwelling or house or residence-related appurtenances are permitted on the Protected Property, except for those presently existing on the Homestead Area, as the same may be replaced or restored in accordance with Paragraph 5.7. A residence, dwelling or house is any structure, which includes, but is not limited to, cabins and lodges, which is designed for or capable of occupation by humans, as distinguished from agricultural structures.

New Residence The Grantor may construct, improve, maintain, repair, replace, and restore on the Protected Property one new single-family residence with residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires. The Grantor

must locate the new house and all of its residence-related appurtenances within the (INSERT ACRES) acre "New Homestead Area" shown on the Report.

Although the Grantor need not obtain approval of the Grantee in order to exercise any reserved rights in Paragraph 5, unless otherwise stated herein, the Grantor hereby agrees to notify the Grantee in writing before exercising any reserved right which may have an adverse impact on the conservation of the agricultural values associated with the Protected Property.

6. **Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Protected Property. Among other things, this shall apply to:

- 6.1 **Taxes** - The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor will reimburse the Grantee for the same.
- 6.2 **Upkeep and Maintenance** - The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by local, state and federal laws and regulations. The Grantee shall have no obligation for the upkeep and maintenance of the Protected Property.
- 6.3 **Liability and Indemnification** - The Grantor agrees to indemnify, defend and hold the Grantee harmless for any and all claims or liability, including, but not limited to, reasonable attorney fees arising from personal injury, accidents, negligence, environmental contamination, or damage relating to the Protected Property or any claim thereof, unless due to the negligence of Grantee or their agents, in which case liability shall be apportioned accordingly.

7. **Current Agricultural Use Valuation**

Except for the Homestead Area, the Protected Property is, as of the date of execution of this Easement, valued at its agricultural use for purposes of real property taxation, under

Section 5713.31 of the Ohio Revised Code. Furthermore, the Grantor shall not fail to annually file a renewal application under Section 5713.31 of the Ohio Revised Code, unless Ohio law specifically exempts the Grantor from payment of real estate taxes on the land.

8. Grantee's Enforcement Rights and Remedies

In order to enforce the terms of this Easement, the Grantee shall have the following rights and remedies:

8.1 Remedies – In accordance with the provisions set forth in the Ohio Administrative Code §901-2-11, the Grantee shall have the right to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of the grant of this Easement, subject to the reserved rights of the Grantor set forth herein. The Grantee, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to acts of God or other causes beyond the Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, or the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that the Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the agricultural purposes of the Easement, whether caused by the acts or omissions of the Grantor or third parties, or by natural occurrences.

8.2 Enforcement Costs - All reasonable costs incurred by the State Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by the Grantor. The State Grantee shall be responsible

for violation enforcement, but may request assistance from the Local Grantee in its effort to enforce the terms of this Easement.

8.3 Right of Entry - The Grantee or its agents shall have the right to enter the Protected Property, in a reasonable manner and at reasonable times, for the purposes of:

8.3.1 Inspection of the Protected Property to determine if the Grantor, or his heirs, successors or assigns, is complying with the provisions of this Easement;

8.3.2 Obtaining evidence for the purpose of seeking judicial enforcement of this Easement.

9. Monitoring

The Local Grantee shall conduct at least one annual monitoring visit of the Protected Property verifying that the Grantor is in compliance with the terms and conditions of this Easement, and shall submit an annual monitoring report, as provided by the State Grantee. If the Local Grantee determines the provisions of this Easement are not being complied with and these violations cannot be resolved with the Grantor, then the Local Grantee shall notify the State Grantee of the alleged violation. The Grantees shall then determine if judicial action is necessary to enforce this Easement, and shall assume responsibility for all necessary enforcement action in court. Notwithstanding any other provisions in this Easement the State Grantee or the State Grantee's designee reserves the right to conduct an inspection of the Protected Property and enforce any violations of this Easement.

10. Promotion

With the permission of the Grantor, the Grantee may post a sign(s) which states that the Protected Property is preserved by an agricultural easement.

11. Perpetual Burden

This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor and the Grantee, their heirs, successors and assigns.

12. Assignment

This Easement is in gross and may be assigned or transferred by the Grantee, in whole or in part. Any such assignment or transfer shall provide that the transferee or assignee assumes the obligation of the Grantee hereunder to enforce in perpetuity the terms of this Easement for the purpose of assuring the continuation of the agricultural purposes which this Easement was originally intended to advance. In addition, if the Grantor donated a portion of the agricultural easement value, the Grantee agrees to the following:

12.1 Any organization or entity to which Grantee assigns or transfers its interest in this Easement shall be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder.

12.2 If the Grantee, or its assignee, ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state, a court with jurisdiction shall order the transfer of this Easement to another qualified organization that agrees to assume the responsibility imposed by this Easement.

13. Immediate Property Right

The Grantor agrees that this perpetual Easement gives rise to a property right, immediately vested in the Grantee, with fair market value which is at least equal to the proportionate value that this Easement at the date of its grant bears to the value of the Protected Property as a whole at the time this Easement was acquired as set forth in Section 901.22(A)(2)(b) of the Ohio Revised Code. The proportionate value is determined only if the Easement is ever extinguished in accordance with Paragraph 15 below.

14. Transfer of Protected Property

Unless this Easement is extinguished, as set forth below, the Grantor agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests himself of any interest in all or part of the Protected Property. The Grantor agrees to notify the Grantee, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

15. Extinguishment of Easement

This Easement is in perpetuity. Ohio law allows for this Easement to be extinguished under the following situations:

15.1 If it is determined that an unexpected change in the conditions of or surrounding the land that is subject to this Easement makes impossible or impractical the continued use of the land that is subject to this Easement makes impossible or impractical the continued use of the land for the purposes described in this Easement, then this Easement can be extinguished by judicial proceeding as set forth in Section 901.22(A)(2)(a) of the Ohio Revised Code and Section 901-02-12 of the Ohio Administrative Code, including extinguishment by eminent domain proceedings under applicable state or federal law, as permitted by Section 901-02-12(J) of the Ohio Administrative Code.

If this Easement is extinguished, as provided above, then upon the sale, exchange, or involuntary conversion of the land subject to this Easement, the Local Grantee shall be paid the value of the easement which is an amount of money that is at least equal to the proportionate value of this Easement compared to the total value of the land at the time this Easement was acquired, as required by Section 901.22(A)(2)(b) of the Ohio Revised Code and Section 901-01-13 of the Ohio Administrative Code.

Upon receipt of the proportionate value proceeds, the Local Grantee shall remit to the Director of the Ohio Department of Agriculture an amount of money equal to the percentage of the cost of purchasing this Easement if received as a matching grant, as required by Section 901.22(A)(2)(c) of the Ohio Revised

Code and Section 901-02-13 of the Ohio Administrative Code. Moneys received by the Director shall be credited to the Agricultural Easement Purchase Fund.

16. **Hazardous Waste**

The Grantor warrants that he has no actual knowledge of a release of a hazardous substance or toxic waste on the Protected Property as such substances or wastes are defined by applicable local, state and federal laws and regulations, and hereby promises to indemnify and defend the Grantee, and hold the Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws and regulations.

17. **Indemnification**

Grantor shall indemnify, defend, and hold harmless Grantee from any liability resulting from Grantor's negligent acts, including, but not limited to, the release, use or deposit of any hazardous substance on the property.

18. **Amendment of Easement**

Grantee may amend this Easement only with the written consent of the Grantor. Any such amendment shall be consistent with the "Statement of Purpose" of this Easement and with the Grantee's Easement amendment policies and shall comply with Section 170(h) of the U.S. Internal Revenue Code or any regulations promulgated in accordance with that Section. Any such amendment shall also be consistent with Section 5301.67 *et seq.*, of the Ohio Revised Code or any regulations promulgated pursuant to those laws. Any such amendment shall be duly recorded.

19. **Re-Recording**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Grantor appoints the Grantee his attorney-in-fact to execute, acknowledge and deliver any necessary instrument on his behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

20. **Definitions**

The terms “Grantor” and “Grantee” as used herein shall be deemed to include, respectively, the Grantor, his heirs, successors and assigns, and the Grantee, its successors and assigns.

21. **Notices**

Any notices required by this Easement shall be sent registered or certified mail, return receipt requested, to the State Grantee and the Local Grantee at the following addresses or such addresses as may be hereafter specified in writing:

State Grantee:

Ohio Department of Agriculture, Office of Farmland Preservation
8995 East Main Street, Reynoldsburg, Ohio 43068

Local Grantee:

(INSERT ADDRESS)

22. **Severability**

If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

23. **Entire Agreement**

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. Originals and supporting documentation are on file in the Ohio Department of Agriculture, with a copy available on file with the Local Grantee.

24. **Termination of Rights and Obligations**

A party's rights and obligations under this Easement and in the Protected Property terminate upon transfer of such the party's interest in the Easement or Protected Property, except that liability for acts or omissions prior to transfer shall survive transfer.

25. **Modifications**

This Easement may not be changed, modified or discharged except by a writing signed by the duly authorized representatives of the Grantor, and the Grantee.

26. **Governing Law**

This Easement shall be governed by and interpreted under the laws of the State of Ohio. Except as otherwise specifically provided, all references to statutes and regulations that are contained in this Easement shall be construed to mean the version of that statute or regulation (as the case may be) in effect as of the date on which this Easement is recorded. Any action or proceeding arising out of the terms of this Easement shall be brought in a court of competent jurisdiction located in Franklin County, Ohio.

27. **No Merger**

If Grantee at some future time acquires the underlying fee title in the Protected Property, the interest conveyed by this Easement will not merge with the fee title but will continue to exist and be managed as a separate estate.

28. **Rules of Convenience**

For convenience, masculine pronouns used in this document include the feminine and neuter pronouns, and the singular tense includes the plural tense. Additionally, all references to either Grantor or Grantee include their respective personal representatives, heir, successors, devisees and assigns, unless otherwise noted.

28. **Recitals**

The recitals shall be considered substantive terms of this Easement.

TO HAVE AND TO HOLD the above-described Agricultural Easement to the use, benefit, and behalf of the Grantee, Grantee's successors and assigns forever.

The Grantor(s)

Signature: _____

(INSERT LANDOWNER NAME)

Signature: _____

(INSERT LANDOWNER NAME)

Acknowledgement

State of Ohio

County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____ 2008 by _____, who acknowledges that S/he/they did sign the foregoing instrument, and that the same is her/his/their free act and deed.

Notary Public

My Commission Expires:

Acceptance by Local Grantee

(INSERT NAME OF LOCAL GRANTEE)

Signature: _____

Print Name: _____

Acknowledgement

State of Ohio

County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by _____, acting for and on behalf of _____, State of Ohio, who acknowledged that they executed the same for and on behalf of that local jurisdiction and that they did so on their, the local jurisdiction's own free act and deed.

Notary Public

My Commission Expires:

Acceptance by State Grantee
OHIO DEPARTMENT OF AGRICULTURE

Print Name: _____

Title: _____

Ohio Department of Agriculture

Acknowledgement

State of Ohio

County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by _____, the _____ of the Department of Agriculture, acting for and on behalf of the State of Ohio, who acknowledged that S/he/they executed the same for and on behalf of that department and the State of Ohio and that S/he/they did so on her/his/their, the Department's and the State of Ohio's own free act and deed.

Notary Public

My Commission Expires:

This instrument was prepared by:
Ohio Department of Agriculture
Office of Farmland Preservation
8995 E. Main Street
Reynoldsburg, Ohio 43068

Publication Page