

**PROPOSED LOCAL CLEAN OHIO AGRICULTURAL EASEMENT  
PURCHASE PROGRAM (AEPP)**

**Introduction**

*In January, 2011, I was asked by ODA director James Zehringer to review the Office of Farmland Preservation’s Clean Ohio Agricultural Easement Purchase Program (AEPP) and come up with my own recommendations. After a four month review, which included a study of the AEPP process and interviews and meetings with numerous ODA officials and local stakeholders, my primary recommendation is that ODA convert the AEPP from a central-run to a local-run program, and that this new program begin in the next AEPP funding round in 2012. Below are my suggestions on how a local-run AEPP could be implemented.*

**A. Application for Certification to Participate in the Local AEPP Program**

1. Eligible Applicants (hereafter referred to as “entity”):

- Land Trust- with Professional Staff
- Land Trust – without Professional Staff
- Local Soil and Water Conservation District
- Government- County/RPC

- Government – Township/Municipality
- Partnership of Entities

2. Describe Entity's Farmland Preservation Efforts:

- Organizational information including staff, governing board, membership, by-laws, budget, and Stewardship Fund.
- History, Background, Goals and Objectives, including any agricultural or conservation easements held by the entity.
- Strategies that your locality is using to preserve farmland, e.g. comprehensive land use plan, Agricultural Security Area, agricultural-type zoning, etc.

3. Explain how Entity would manage a Local AEPP Program, including:

- Staffing, including managerial, legal and financial expertise.
- Marketing of Local AEPP Program to farmland owners.
- Locally-tailored ranking system used to select farms.
- This proposal calls for a Local AEPP Board, to be comprised of at least five people appointed by the governing board of the local entity, to oversee the AEPP program, including policy making and the process for selecting farms.
- Agricultural Easement acquisition process (title search, appraisal, recording of deed, etc.).
- Monitoring and Enforcement of Agricultural Easement

**B. ODA Certification and Capacity Rating:**

1. ODA Determines: Does entity have capacity to operate a Local AEPP Program?

*Note: This question addresses the level of staff expertise and degree of agricultural or conservation easement experience of the entity, and any participation by the entity with ODA's farmland preservation programs.*

Yes

No

2. If "Yes," then ODA determines the degree of capacity, and assigns one of three levels of maximum AEPP funding eligibility:

(A) Start-up – entity may submit to ODA up to three farms for AEPP funding up to \$500,000.00\* (*In order to encourage new participants, ODA should consider setting aside a specific portion of AEPP funding for start-ups.*)

(B) Intermediate Experience- Entity may submit to ODA two or more farms for AEPP funding up to \$750,000.00\*

(C) Strong Experience – Entity may submit to ODA two or more farms for AEPP funding up to \$1,000,000.00\*

*\*Note: AEPP funding amount limited to existing caps in Section B.3. below*

3. ODA would continue current funding caps:

- \$2,000 per acre

- \$500,000 per farm

-\$500,000 per county

4. Bonus AEPP: In the event an entity(s) fails to expend its allowable funding amount, the director of ODA, at his discretion, may:
  - (A) Award this funding amount to another entity(s), toward a back-up farm; or
  - (B) Forward any unused funding toward the next funding round.
5. Post-Certification Training: For entities certified for AEPP funding, ODA should conduct training sessions toward the major components of the AEPP process that entities will assume primary responsibility for administering.
6. A certified local entity will be required to comply with the same Clean Ohio bond funding timelines that ODA is legally subject to. Specifically, an agricultural easement must be purchased within two years starting when the Clean Ohio bonds are issued.

**C. Application, Ranking and Selection of Farms for Local AEPP funding:**

1. Application: Entity markets its Local AEPP Program and uses a local, but flexible, landowner application provided by ODA. The application submittal period is not to exceed 3 months.
2. Ranking System: ODA shall develop a revised ranking system that will give local entities options and flexibility. Specifically, a local entity will have the flexibility to tailor the ranking criteria to its unique farmland preservation

priorities and have the option to use a Tier 1 only, or a combination Tier 1/Tier 2 ranking system. If the local entity uses a Tier 1 only ranking system, it can incorporate within it the subjects that traditionally have been addressed in the current Tier 2 ranking system. If the local entity chooses to use a Tier 1/Tier 2 ranking system, then its Local AEPP Board would conduct the Tier 2 scoring.

**D. Local Process of Purchasing an Agricultural Easement:**

1. Title Search: After completing its farmland ranking, the local entity is responsible for initiating a Title Search on the Successful Applicants selected for AEPP funding. [Note: ODA must review the Title Report and approve the boundary description, concur with any necessary subordinations, and assure clean title for farmland preservation purposes.]
2. Appraisal: In order to determine the purchase price of the agricultural easement, the local entity has the option to use ODA's points-based appraisal system, which is established by the director using the factors required in the Ohio Revised Code (ORC) 901.22 (D)(2), or the traditional comparable sales appraisal method. In either case, the purchase price of the easement remains subject to the per-acre and per-farm caps of the program, as well as the limitation that ODA cannot pay more than 75% of the easement value.
3. Deed of Agricultural Easement: Using a template Deed of Agricultural Easement prescribed by ODA, the local entity and landowner negotiate the

terms of the deed. ODA reviews and approves final Deed of Agricultural Easement.

4. Option to Purchase an Agricultural Easement: If the landowner, entity and ODA agree with the appraisal and deed, then they sign an “Option to Purchase an Agricultural Easement.” By signing this agreement, the landowner agrees to accept the purchase price of the Agricultural Easement less the expenses described in Section E below.
5. Final Deed: Entity submits ODA-approved Deed of Agricultural Easement, signed by entity and farm owner; director of ODA then signs the deed; and ODA forwards the signed Deed and AEPP purchase amount to Title Company for closing.

**E. Closing at Title Company:**

1. Deed of Agricultural Easement signing and Clean Ohio AEPP money given to farmland owner, less expenses for appraisal, title search, title insurance premium, recordation fee, and closing costs.
2. Option: Entity may charge an Administrative and Stewardship Fee for a successfully funded farm’s agricultural easement purchase. The amount of this fee needs to be based on commonly used standards, such as those recommended by the American Farmland Trust or Land Trust Alliance. This fee may be deducted from the AEPP purchase price at closing. It is recommended that the rules, as established by the Ohio Administrative Code

(OAC), give the director of ODA the authority to establish the fee prior to each AEPP funding round.

3. Title Company records Deed of Agricultural Easement, and forwards the original recorded deed to ODA, as well as a copy of the recorded deed to the entity and farm owner.

**F. ODA – Entity partner to monitor and enforce Ag. Easement (s) in perpetuity.**

1. Monitoring and enforcement is conducted as per OAC 901-2-11 (A) through (I).

**G. New Role of ODA Farmland Preservation Advisory Board:**

1. The Farmland Preservation Advisory Board would review this proposal and advise the director of ODA on the implementation of the program. It is noted that the Advisory Board would no longer do the AEPP Tier 2 ranking.
2. Assuming a Local AEPP Program is implemented, the Farmland Preservation Advisory Board's new role would be to review the application, certification, and local ranking and farm selection process described in Sections (A) through (C) above.

## **H. Legal Issues to be Resolved:**

1. This proposal is designed to be implemented without any changes to the ORC, but does require adjustments and additions to the AEPP rules (OAC). (The current, centralized AEPP rules would be eliminated and completely replaced by a decentralized program.) In particular, two major legal additions to the rules will be needed to implement this proposal: the “Application for Certification” and “ODA Certification and Capacity Rating.” In addition, several major adjustments to the OAC will be needed to shift administrative responsibilities from ODA to the local entities regarding the application procedure, the farmland ranking system, and the process for purchasing an Agricultural Easement.

2. Here are some preliminary suggested changes/additions to OAC Chapter 901-2 for the proposed local AEPP program:

### **901-2-01 Definitions**

- All current definitions in this section are kept. The following new items to a local AEPP program will need to be added:
  - Application for Certification;
  - ODA Certification and Capacity Rating; and
  - Administrative and Stewardship Fee.

### **901-2-02 Eligibility Requirements for Application Property**

- No changes necessary.

### **901-2-03 Eligibility Requirements for Local Sponsors**

- No changes necessary.

#### **901-2-04 Application Procedure**

- 04 (A) through (D) is kept.
- 04 (E), which regards ODA’s review of a land trust’s capacity to manage an Agricultural Easement, is kept, except that it will apply to all local entities and become part of the “Application for Certification,” as described in Section A(2) above.
- 04 (G) through (I), which regards amendments and corrections to the farmer’s application, is kept, but will become the entity’s responsibility during the farm application process, instead of ODA’s responsibility.

#### **901-2-05 Farmland Ranking System**

- This proposal recommends that ODA streamline the current Ranking System to make it more simple and flexible for the local entity. Also, as proposed in Section C.2. above, the local entity should have the option to use a Tier 1 only or combination Tier 1/Tier 2 ranking system.

#### **901-2-06 Determination of Selected Application Properties**

- 06(A), Phase one “Application,” and 06(B), Phase two “Contingency,” will be the entity’s responsibility, not ODA’s.
- 06(C) This proposal requires the local entity, rather than ODA, to initiate any comparable sales appraisal method to determine the value of the agricultural easement.

- 06(D), which is referring to the cost of the title search, appraisal, etc., will be the entity's responsibility, not ODA's. These costs may be:
  - incurred directly by the landowner or local entity;
  - reimbursed directly to the entity by the landowner; or
  - reimbursed to the entity through the title insurance company, as escrow agent, at closing.
- 06(E), Phase three "Option to Purchase," 06 (F) Phase four "Review," and 06(G) Phase five "Execution of Deed of Easement," is a partnership between the entity and ODA. These sections need changed to show that while the entity is responsible for managing the title search, appraisal, Deed of Agricultural Easement, "Option to Purchase" agreement, etc., ODA retains the authority to review and approve these and all other legal aspects to a Local AEPP Program.

#### **901-2-08 Present Condition Report**

- No changes necessary.

#### **901-2-09 Appraisals**

- As mentioned in Section D.2. above, this proposal gives local entities the option to use either the comparable sales appraisal method or ODA's points-based appraisal method to determine the value of the agricultural easement. *[Note: The ORC requires that ODA cannot pay more than 75% of the appraised value of the agricultural easement.]*

### **901-2-10 Deed of Agricultural Easement**

- No changes necessary.

### **901-2-11 Supervision and Enforcement**

- No changes necessary.

### **901-2-12 Easement Extinguishment**

- No changes necessary.

### **901-2-13 Recoupment of Funds**

- No changes necessary.

## **I. Suggestions to Streamline a Local-Run AEPP:**

A secondary, but important, proposal is to shorten the timeframe for ODA's Office of Farmland Preservation and local entities to process an AEPP funded agricultural easement. One of the biggest complaints by farmers and local entities is it takes "too long" to process an easement purchase. As noted in Section B.6. above, the law requires ODA to expend 100% of the bond funds within two years-starting from the time the bonds are issued. Here are three suggestions to streamline and shorten the AEPP program's process:

1. Simplify Local AEPP Process: ODA should electronically provide to local entities key documents and templates to the AEPP process in as simplified form as possible. These items include the Application for Certification, a flexible Landowner Application, a flexible Ranking System, and a "farmer-friendly" state Deed of Agricultural Easement.

2. Choosing Title Company and Appraiser. The local entity or the farmland owner should be able to choose any certified title company and any certified appraiser, as long as there is no conflict-of-interest and no past or current problems with such companies with the state. However, to ensure transparency in the AEPP process, ODA must be provided with the costs associated with these items and make them publically available.
3. Deed of Agricultural Easement. ODA currently has three kinds of Deeds of Agricultural Easement - ODA-FRPP-Local AEPP Deed, ODA-Local AEPP Deed, and ODA Donation Deed with either a local co-holder or local monitor. The latter two deeds have evolved in recent years with federal FRPP regulations. This is unnecessary; the "non-federal" deeds should be streamlined and made more farmer-friendly, particularly on policies toward housing, oil and gas leases, and impervious surfaces.

## **Conclusion**

*My proposal recommends that ODA convert the AEPP from a central-run to a local-run program, within prescribed, but simple and flexible, state parameters. The reasons for decentralizing the AEPP are the same as those the Ohio FP Advisory Board gave in its June 2008 concept paper, "AEPP: From Pilot to Further Progress": Build local management capacity, allow locals to prioritize their farmland protection, and expand the diversity of the state's agriculture. Today, I believe the Office of FP is behind in its workload and since that workload is cumulative and budget cuts appear to be a reality, the office cannot*

*sustain itself under the status quo. A locally run AEPP starting in 2012 will eventually enable the office to catch-up on its workload, create an effective and efficient partnership with local entities, and provide a farmer friendly way to preserve Ohio's productive farmland.*

Howard F. Wise

*Final Recommendation Submitted to ODA Director James Zehringer and the Ohio Farmland Preservation Advisory Board on June 15, 2011.*

*Last Revised: June 6, 2011*