



Clean**Ohio**Fund

Farmland Preservation

**Agricultural Easement Purchase Program
Application Handbook**

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Purpose of this Handbook

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

Landowner Should Seek Professional Advice

An agricultural easement can be a major decision for a landowner and his or her family. In order to ensure that the best interests of the landowner are met, ODA highly recommends that the landowner seek independent legal counsel, as well as independent financial advice.

Application 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 – Post-Approval Process

describes the post-funding steps for a landowner and local representative

Chapter 6 – Frequently Asked Questions

includes frequently asked questions by applicants and landowners

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 showed that people were continuing to transfer to unincorporated areas-some of these township residents are in subdivisions; others are on scattered five-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 "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 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. Farmland provides various eco-system services, like groundwater recharge, composting of organic

Chapter 1: Overview

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.

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 their descendents will not go hungry due to squandered rich, productive farmland.

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 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. Of these programs, Pennsylvania has protected the largest acreage with more than 400,000 acres 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 more than 42,000 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 donated portion of the easement. In addition, the landowner has contributed to Ohio's public good by preserving the agricultural values associated with the farmland for future generations.

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

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

Purchase of agricultural easements is one of a variety of policy options for protecting farmland. This method enables the public to reimburse an interested farmer for a portion 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 many cases, there are far more interested farmers than dollars available. Priorities must be set in order to use public dollars wisely.

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.

Drawbacks to agricultural easements include:

- Easements must be carefully drafted to ensure that the terms allow farmers to adapt and expand their operations and farming practices to adjust to changing economic conditions and future agricultural advancements.
- Monitoring and enforcing easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.

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- 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 statewide 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. Not until the passing of SB 223, was a funding mechanism determined. This bill granted a legal basis for establishing the Clean Ohio Fund's AEPP, as well as the Ohio Agricultural Easement Donation Program.

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

To ensure continuation, funds were divided on a yearly basis, with the \$25 million distributed between 2002 and 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 were acquired through the Clean Ohio AEPP and 42 agricultural easements were 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 funding, the department has preserved only 135 of those farms, totaling approximately 26,800 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, which is creating tens of thousands of new jobs, includes a \$400 million bond renewal for the Clean Ohio Fund. Similar to its original form of 2001, the fund preserves farmland and green space, develops recreational trails and cleans up brownfield sites. Voters overwhelmingly passed the initiative in every Ohio county. Allocation of funds began 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. All easement transactions are permanent, are recorded on the property deed, and transfer with the land to successive owners.

The Office of Farmland Preservation (OFP) will administer the program with monies granted by 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.
- Ohioans are investing in the state's economic drivers, food and agriculture being Ohio's No. 1 industry.

Challenges of the AEPP program include:

- Purchasing easements can be costly in the short-term to communities and tax payers, but the investment is utilized over a long time.
- Rarely can the program protect enough land to eliminate development pressure on unrestricted farms.

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- The program is unable to keep up with farmer demand to sell easements. Each year the program can protect only a small percentage 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**
- **Supporting Players and Roles**

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 a municipal corporation, county, township, or 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 a local sponsor 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 provides staff assistance for 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.

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 and Roles in the Application Process: Pre-Selection

Central Players	Role	Specific Duties
<p>Local Sponsor (county, township, Municipal corporation, or charitable organization)</p>	<p>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.</p>	<ul style="list-style-type: none"> • agrees to be a co-holder of the agricultural easement • completes application including providing all attachments • verifies accuracy of application and signs the application
<p>Landowner</p>	<p>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.</p>	<ul style="list-style-type: none"> • voluntarily agrees to have local sponsor 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 a political subdivision, SWCD, or charitable organization, commits 25% of the easement's value as a donation or cash match • assists in the completion of the application, including signature page
<p>Ohio Department of Agriculture (ODA)</p>	<p>ODA oversees the Clean Ohio AEPP and works in conjunction with the Ohio Farmland Preservation Advisory Board</p>	<ul style="list-style-type: none"> • provides application and procedures 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

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

Supporting Players	Role	Specific Duties
Director of Agriculture	The Director of Agriculture shall make available the application, its process and procedures.	<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.

Supporting Players and Roles in the Application Process: Pre-Selection (continued)

Supporting Players	Role	Specific Duties
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

The Application Process

The application will be open and available to applicants for no more than 90 days. During this time, local sponsors are responsible for ensuring that all parts of the application are completed by the appropriate persons or agencies and submitted to the OFP by the stated deadline. Incomplete or late applications may be disqualified.

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

Lands Eligible for Purchase of Agricultural Easement

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

- The application property shall be valued, at the time the application is made, at its current agricultural use valuation for real estate tax purposes under section 5713.31 of the Revised Code, except for the homestead.
- Landowner must have fee simple title to the land.
- The landowner must certify that, to the best of the landowner's knowledge, the application property contains no hazardous substances or toxic wastes.
- All parcels submitted under one application shall be contiguous and no land that is included as part of the submitted parcels shall be excluded. Waiver of this requirement may be considered by ODA based upon farm size or value.
- The application property shall be enrolled, at the time the application is made, in the agricultural district program.
- An application must provide at least a twenty-five per cent local matching contribution in cash, or the landowner may agree to accept a minimum of a twenty-five per cent reduction of the appraised agricultural easement value.

Before Starting the Application

Before starting the 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:

Chapter 3: About the Application

- **Clean Ohio AEPP Brochure**
The brochure provides basic information on the program.
- **Sample State Deed**
If chosen for funding, a similar deed will be placed on the property. The landowner should be willing to comply with the deed conditions. Two areas that are typically of highest interest to landowners are homestead areas/new residences and non-agricultural development issues. ODA advises landowners to review these sections of the deed prior to commitment to the Clean Ohio AEPP.
- **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 Tier One of the AEPP application before filling out the entire application. To utilize this tool, simply click on the “Tier One Estimator” button 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 completely each funding round prior to creating an application. A copy of the Guidelines and Policies is located on ODA’s Web site. Key areas of interest for applicants may include: farm size requirements, eligibility criteria, farmstead policy, large farm exceptions, funding caps, and pre-determined regional balance considerations.

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 totals 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 approved by the local SWCD representative. A designation of ‘unique’ or ‘locally important’ may be pursued by working with the county’s USDA district conservationist and the

county commissioners. The purpose is to protect the most agriculturally productive and conducive soils. This section is Step 18 within the application. (20 points)

- 2.) **Proximity to other agricultural land:** The rules give preference to land that is adjacent to or in close proximity to other agricultural land or land that is conducive to agriculture. This includes lands that are, or in the process of becoming, permanently protected from development by agricultural easement or otherwise, so that a buffer would exist between the land involving the proposed agricultural easement and areas that have been developed or likely will be developed for purposes other than agriculture. The purpose is to ensure long-term farm viability. This section is Step 12 within the application. (15 points)
- 3.) **Use of best management practices:** The rules give preference to farms which have federally or state approved conservation plans and a history of substantial compliance with applicable federal and state laws. The highest ranking is given to farmland with established and implemented conservation plans. This information must be approved by the local SWCD representative. This section is Step 17 within the application (5 points)
- 4.) **Development pressure:** The rules give preference to land that is in imminent, but not currently in the direct path of urban development. This is often referred to as intermediate development pressure and includes farms that are neither directly in front of the bulldozer, nor far from development's fringe, but rather farms that are midway between intense pressure and no pressure at all. 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)
- 5.) **Local comprehensive land use planning:** The rules give preference to areas identified for agricultural protection in local comprehensive land use plans. These points are awarded as an acknowledgement of the importance of local efforts to manage growth and preserve productive farmland. This section is Step 15 within the application (16 points)
- 6.) **Other criteria:** The rules allow for the director to determine other 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 maximum of 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

Chapter 3: About the Application

evident in the more objective 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
- 5.) Examples of sustainable agriculture on the farm.

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/rubric to assist in providing consistent scoring to applications. The *Advisory Board Scoring Guide* is available online. To ensure 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. "Regional balance" may be considered in the advisory board's recommendations to the director in determining 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. Subsequently, applications have been divided amongst four regions. See the Guidelines and Policies for more detail regarding predetermined regional balance definitions.

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

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value of the agricultural easement. 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 a small percentage 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 a completed round notification 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**

How to Copy a Previous Year's Application

Printing the Application

Attachment Checklist

Submitting an Application

Creating a New Account

To reach the Clean Ohio AEPP application Web site, go to www.agri.ohio.gov/farmland. To create a new application or to work on one that you've already started, log into one of two accounts on the left menu within the application Web site- either a **Local Sponsor** account or a **SWCD** 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").

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 ID" (for a SWCD account).

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

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 a new 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, if you choose the "Add a New Farm with Local Sponsor" button. This information may still be edited if necessary.

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

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

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

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

SWCD

After logging into the system, the SWCD representative will be able to complete Steps 17 and 18 of an application. Once the SWCD 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 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 the SWCD representative 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 the current year

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

To utilize data from a previous year’s application:

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

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

Printing the Application

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

In order to print a **complete application**, the 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 side menu
- 3.) Enter the LSID and the FARM ID as directed
- 4.) Click on “Submit Electronic Application”
- 5.) Click “Next” on Step 20
- 6.) Click “Print Electronically Submitted Application”

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

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

Attachment Checklist

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

Submitting an Application

Applications must be complete and turned in prior to the application deadline or they may be disqualified. All applications must be received by electronic submission and hardcopy on or before the given deadline. 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 OFP by the application deadline. Before mailing, it is

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suggested that a copy of the completed application be made to keep for your personal records.

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

Chapter 5: Post-Approval Process

Notification

Next Steps

Appraisal

Agricultural Easement Guide

Present Condition Report

Closing

Annual Monitoring

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Notification:

Within 90 days of submission, the Farmland Preservation Advisory Board will meet and score the Tier Two applications. After scoring has been finalized, the OFP will contact the landowner main contact to directly make a full or partial purchase, if selected. The landowner will accept or decline the offer verbally, usually requested within 24 hours. If the offer is verbally accepted, the OFP sends a Notice of Selection letter, indicating the purchase price and known acreage. The letter must be signed and returned within 10 days of receipt.

Next Steps

Subsequent to receipt of the *Notice of Selection*, the OFP will begin the process of title review. The purpose of title review is to ensure that any third party interests will not affect the agricultural future of the property. The Office hires a title agent through the state bidding process. After receiving bids, the title agents will begin a title search, checking to ensure that the property is clear of defects or third party interests. Once the title review is complete, landowners will be contacted with title issues that require attention.

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

After the title review and prior to the parties signing the Agricultural Easement, all parties will sign a preliminary agreement, the *Option to Purchase*. The Option to Purchase is an agreement wherein the Landowner acknowledges to ODA and the Local Sponsor that he or she has been advised to consult with an attorney and financial professional prior to signing the Agricultural Easement. Further, the Landowner recognizes the perpetual nature of the easement, and the types of restrictions associated with the document. The Landowner also agrees to accept the funds that ODA is willing to provide. If all the parties agree to the terms by signing the *Option to Purchase*, the OFP will proceed in its closing process. Accompanied with the *Option to Purchase*, will be a sample agricultural easement. ODA uses a template easement and later inserts landowner specific modifications. ODA strongly recommends that all landowners seek outside financial and legal advice throughout the process and review the sample deed thoroughly.

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

Appraisal

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

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

Agricultural Easement Guide

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

The purpose of ODA's easement (as stated in the purpose of the deed) is for the applicant property to be "retained predominantly in agricultural use...by preserving and protecting its agricultural soils and viability through a perpetual restriction on the use of the Protected Property". The director has determined that the word 'predominantly' allows for some incidental non-farm development to occur on the farm, as long as he or she determines that such developments do not affect the agricultural values or soils of the Protected Property.

Since the easement, by Ohio law, must be in perpetuity, the state, local and landowner partners, when negotiating the easement, should keep in mind that the easement must apply to future landowners, new agricultural technologies, and be able to stand the test of time. Therefore, the terms of the easement must be flexible enough to allow for present and unforeseen activities that are consistent with the purpose of the easement, but strong and clear enough to prevent unacceptable activities.

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

Grantor: refers to the landowner, partnership, corporation, or trust that sells and/or donates an agricultural easement

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

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Recitals. The easement begins with a series of introductory paragraphs that establish ODA's qualifications to hold an agricultural easement and summarizes the agricultural and other conservation values of the property. The conservation and public benefits mentioned here are important to document if the landowner is looking to qualify the easement as a charitable contribution for tax deduction purposes.

Exhibits. Exhibit A is a copy of the title to the land, also known as the legal description, and Exhibit B is the Present Condition Report.

1. *Statement of Purpose.* This is a statement that documents the primary purpose of the easement as protecting the property's "agricultural soils... and viability." A secondary purpose of the easement may be to protect or preserve woodlots, wetlands, or other natural areas that can provide agricultural benefits, including cleaning water, recharging aquifers, preventing soil erosion, and serving as wind breaks.
In the case of agricultural easements where the landowner is donating a portion of the easement, the IRS considers these primary and secondary purposes, as well as other ancillary benefits such as preserving plants, protecting wildlife habitat, and providing scenic views, as conservation values of the property.
2. *State Agricultural Conservation Policy.* These paragraphs detail the applicable laws to purchasing an agricultural easement in the State of Ohio. This section also includes citations of governmental policies—federal, state and local—which address farmland protection. Documentation of these governmental policies further enables the donation portion of the easement to qualify for a charitable tax deduction, if applicable.
3. *Present Condition Report.* The Present Condition Report, or "Exhibit B," is intended to show the current natural and physical conditions of the property. The report also serves as the basis for future monitoring of the easement and possible enforcement. The report will outline a "Farmstead or Homestead Area" if applicable. In the absence of an existing home, a Homestead Area can be delineated for future use. The location of the Homestead Area should help maintain the agricultural viability of the property, but also minimize any impact on the property's agricultural conservation resource values.
4. *Prohibited Uses/Restrictions.* The following paragraphs detail restrictions the easement places on the protected property that would interfere with the agricultural purpose of the easement. **Read this section in conjunction with section 5, which describes the permitted uses/activities.**
 - a. *Industrial, Commercial, and Residential Activity.* Except what is detailed in section 5, no industrial, commercial, residential or non-agricultural activity shall occur on the Protected Property.
 - b. *Structures.* Except what is allowed in section 5, no structures are permitted to be built.
 - c. *Agricultural Subdivision.* Legal subdivision of the property is prohibited.

- d. *Mining*. No surface mining is permitted. In consultation with a tax attorney or accountant, and in consideration of IRS regulations, the easement may allow for very limited opportunities for any exploratory or extractive activities, which would disturb the surface of the land. Operation of a limited sand or gravel removal for farm use is permitted within one acre at any given time. This is also where the issue of severed mineral rights can be addressed, if applicable, by stating that a qualified professional geologist has determined that the probability of removal of minerals by surface mining techniques is “so remote as to be negligible.”
 - e. *Topography*. No activities that change the topography of the Protected Property are allowed, unless done in conjunction with a farm conservation plan.
 - f. *Water*. This paragraph prohibits the owner from separating water rights from the Protected Property.
 - g. *Dumping*. The easement allows the routine farm dump for private use that is found on almost every farm property, but prohibits dumping beyond that. Storage of agricultural products, byproducts, and chemicals is permitted in accordance with applicable laws and regulations.
 - h. *Roads*. No building of new roads or other paved surface can take place outside the Farmstead Area, local or state highway rights-of-way, or those permitted within section 5 without permission from Grantee.
 - i. *Impervious Surfaces*. Notwithstanding any of the other limitations, impervious surfaces on the Protected Property cannot exceed two percent of the total Protected Property acreage.
5. *Grantor’s Reserved Rights*. The following paragraphs detail the right of the landowner to use the property for all purposes that would not interfere with the agricultural purpose for the easement. **Read this section in conjunction with section 4, which describes the restricted uses.**
- a. *Conveyance, Right to Farm, Agricultural Education Programs, Right to Privacy*. The easement defines “Grantor” as the owner of the property, who conveys the easement, and the current owner’s successors in title. These paragraphs affirm the owner will continue to hold all customary rights of ownership, including the ability to sell, lease, and devise the property to heirs. It affirms the owner’s right to conduct any activities not otherwise limited by the easement, and excuses the owner from any obligations that may otherwise be imposed by the easement in the event of natural disasters or events over which the Grantor has no control. Subsequent paragraphs affirm the owner’s right to use the property for agricultural purposes, and the right to privacy, specifically including the ability to exclude members of the public from entering the property. In addition, the right to conduct agricultural education programs.
 - b. *Right to Use the Protected Property for Customary Rural Enterprises*. Many farms, in order to remain economically viable, depend on ancillary business activities such as processing, roadside stands, machinery repair, sawmills, and the like. The easement will allow these types of uses, provided any structures or improvements associated with those uses do

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- not adversely affect the soils or agricultural values of the Protected Property.
- c. *Fences.* The Grantee can build and maintain fences without further permission of the Grantor as long as the fences are consistent with agricultural use of the Protected Property.
 - d. *Existing Residence* (One option will be chosen:)
 - i. Landowners can, at any time, maintain their residence OR
 - ii. There is no existing residence.
 - e. *Agricultural Structures and Improvements.* Landowners can, at any time, maintain their agricultural structures and improvements. The easement outlines a process by which buildings or other improvements can be placed on the property. This process is intended to allow agricultural operations to maintain existing buildings, and construct new buildings as circumstances dictate. ODA views the construction, replacement and expansion of agricultural buildings as a necessary and important component of managing an agricultural operation. As described above, the location of existing structures on the property is identified in “Exhibit B,” the Present Condition Report, which includes a map of the Homestead Area. The Exhibit identifies what buildings were located on the property at the time the easement was imposed, and it allows both ODA and the landowner to know where the construction, repair, replacement or expansion of buildings can take place on the property consistent with the easement.

The easement provides that the construction of buildings and improvements within the “Homestead Area” can take place at any time without any prior approval from ODA. This flexibility allows the landowner to construct improvements without any concern as to the effect of the easement. The placement of any agricultural buildings or improvements outside the “Homestead Area” is also permitted. However, such construction shall be necessary for the operations and shall be sited to minimize adverse effects to prime and unique soils or diminish or impair the conservation values of the property.
 - f. *Existing Recreational Improvements.* Any personal recreational improvements can be maintained, enlarged or replaced without further permission of the State Grantee if it is within the “Homestead Area.” Any personal recreational improvements or enlargements of existing personal recreational improvements proposed for locations outside the “Homestead Area” may be built with the advanced written permission of the State Grantee.
 - g. *New Recreational Improvements.* This paragraph explains that any new *personal* recreational improvements can be built in the Homestead Area without further permission. If built outside the Homestead Area, it requires advanced written permission of the State Grantee.
 - h. *No Commercial Recreational Use.* The property may not be used for commercial recreational purposes unless the use is approved by ODA as ‘de minimus.’

- i. *Utility Services and Septic Systems.* The Grantor can install and maintain permitted utility improvements that benefit the Protected Property without further notice to the Grantee.
 - j. *Wind Energy.* With prior permission by the State Grantee, one or more wind turbines can be built in accordance with a plan designed to comport with the terms of the easement.
 - k. *Paving and Road Construction.* The easement permits paved roads only within the Homestead Area, and allows unpaved roads outside the Homestead Area.
 - l. *Water.* This paragraph affirms the owner's right to use water on the property for agricultural purposes.
 - m. *New Residence.* If there is no existing residence, one new single-family residence may be constructed as documented and reserved in the Present Condition Report. If there is currently a home on the property, it may be improved, maintained, repaired, replaced, and restored as well as the residence-related appurtenances.
6. *Ongoing Responsibilities of Grantor and Grantee.* The purpose of this paragraph is to make it clear that the owner continues to be responsible for taxes, upkeep and maintenance of that property. It also states that the Grantee is indemnified against any legal claims relating to the property, unless Grantee has been grossly negligent.
7. *Current Agricultural Use Valuation.* The grantor must continue to enroll in Ohio's Current Agricultural Use Valuation (CAUV), which requires the land to be continually farmed or under a land retirement or conservation program.
8. *Grantee's Enforcement Rights and Remedies*
 - a. *Remedies.* This paragraph lays out the Grantee's rights to inspect the property, the procedures to be followed if Grantee determines that a violation has occurred, and the remedies that would apply in the event of a violation.
 - b. *Enforcement Costs.* This section explains that all enforcement costs are to be paid by the Grantor. However, if the Grantor prevails in a lawsuit, then the Grantee shall cover the costs.
 - c. *Right of Entry.* It is important that the Grantee be able to monitor the site and enforce the easement. This paragraph gives the Grantee the right to inspect the property, but only if reasonable notice has been given to the landowner.
9. *Monitoring.* The local grantee will, once annually, visit the property to ensure that the terms of easement are being met.
10. *Promotion.* The purpose of this paragraph is to allow the Grantee to post a sign(s) which states that the Protected Property is preserved by an agricultural easement.
11. *Perpetual Burden.* This paragraph provides that the easement runs with the land forever. Therefore, all future landowners and the Grantee are bound to the original terms and conditions of the easement.

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12. *Assignment.* Consistent with IRS regulations, this paragraph allows for the transfer of the easement to a 'qualified organization' that agrees to assume the responsibilities of holding the easement.
13. *Immediate Property Right.* By purchasing the property, ODA (and the Grantee if the 25% local match was in cash) has a vested financial interest in the property, which is equal to the proportionate value of the property as required by Section 901.22(A)(2)(b) of the Ohio Revised Code. Specifically, this section of the code states that if an easement purchased under the Clean Ohio Fund Agricultural Easement Purchase Program is 'extinguished' (i.e., terminated because the Grantee or a court has determined it is impossible or impractical to continue farming the land), 'the holder of the easement shall be paid an amount of money that is at least equal to the proportionate value of the easement compared to the total value of the land at the time the easement was acquired.'
14. *Transfer of Protected Property.* This paragraph outlines the steps required to assure that all future owners of the property will be legally bound by the terms of easement.
15. *Extinguishment of Easement.* While an agricultural easement is meant to be in perpetuity, there is a special provision in the law to extinguish (i.e. terminate) the easement. An easement can be extinguished in one of three ways: 1.) The Grantees can approve the extinguishment at the request of the landowner; 2.) An easement can be extinguished through judicial proceedings; or 3.) At the joint request of the Grantor and Grantees, a court with jurisdiction may extinguish the easement if it determines that an unexpected change in the conditions of or surrounding the land makes it impossible or impractical to continue use of the land for agricultural purposes. Whether the easement is extinguished by the Grantee or by a court, ODA and the Local Grantee must receive an amount of money, when the property is sold or exchanged, that is at least equal to the proportionate value of the easement compared to the total value of the land at the time the easement was acquired. All money ODA receives from extinguishments can only be used to purchase agricultural easements.
16. *Hazardous Waste.* This paragraph indemnifies the Grantee against any claim brought by a third party relating to hazardous waste or violation of environmental laws.
17. *Indemnification.* The state and local grantees are not liable for the Grantor's negligent acts.
18. *Amendment of Easement.* The procedures and criteria for considering an easement amendment request are described in this paragraph.
19. *Re-Recording.* This paragraph ensures that all future documents relating to the easement will be signed by the property owner and recorded by the holder of the easement.
20. *Definitions.* The purpose of the paragraph is to state that the terms of 'Grantee' and 'Grantor' runs with each successor of the local and state Grantor and each successive landowner.
21. *Notices.* The addresses of grantors are stated here for any legal notifications.

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

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

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

Present Condition Report

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

Closing

As with any real estate closing, the closing of an agricultural easement will be completed by a title company or escrow agent, chosen by ODA, but in a location as

Chapter 5: Post-Approval Process

close as possible to the landowner. The purpose of a closing is to sign and finalize the Agricultural Easement and to transfer the funds to the landowner. The title agent will arrange a closing that is acceptable to the landowner and Local Sponsor. After the Easement has been signed and executed, the title agent will file the signed Easement with the County Recorder. A copy of all recorded documents will be sent to the landowner and Local Sponsor.

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

Annual Monitoring

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

Chapter 6: Frequently Asked Questions

Frequently Asked Questions/Concerns

1. What are the tax implications for receiving payment for my easement?
2. How does an easement affect property rights?
3. How long does an easement last?
4. Can improvements be made or other buildings built?
5. What does an easement do to the landowner's eligibility for other governmental programs?
6. If I sell an agricultural easement, will I still own my land?
7. How will an easement affect my operation?
8. Will the public have access to my land?
9. Will selling an easement affect my ability to borrow money?
10. Am I protected from eminent domain?
11. Who may grant an agricultural easement?
12. How does an agricultural easement affect a farm lease?
13. Can I sell my property once the development rights are purchased?
14. What sources of funding can local 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?

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. Under extremely unique conditions, such as the unsuitability of the property for any agricultural purposes due to an external change, the landowner may petition for extinguishment. ODA and the local sponsor must agree that the property no longer has agricultural value, and submit a request to the court for extinguishment. However, the landowner would then be required to repay the cost of the easement, plus appreciation. The competitive screening process is designed to ensure that extinguishment will not be necessary, and easements should be considered perpetual.

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 an 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 easement 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 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, and retains all legal responsibility for the property.

7. How will an agricultural easement affect my operation?

Generally, a landowner may continue to operate the farm in the same manner as prior to the conveyance of the agricultural easement, and may undertake changes in the operation as long as they are not prohibited in the Agricultural Easement, or by the Best Management Plan provided by the Soil and Water Conservation District. 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 rights are purchased. The agricultural easement stays with the land, so the new owner and all subsequent owners must abide by the terms of the Agricultural Easement.

14. What sources of funding can local 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 to be used solely 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 Agricultural Easement addresses specific uses permitted to retain the use of the land as predominantly agricultural.

16. Who can hold conservation and agricultural easements?

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

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

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

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.

18. What information needs to be approved by the Soil and Water Conservation District for the Clean Ohio AEPP application?

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

- (a) Total number of acres available for agricultural use (Step 17);
- (b) Total number and percentage of such available acres considered prime, unique, or locally important (Step 18);
- (c) The date and status of the conservation plan, if any, which has been approved by the county soil and water conservation district (Step 17);
- (d) The date and status of any nutrient management plan (Step 17);
- (e) A United States geological service topographical map with ten foot contour intervals and a county tax map that includes tax parcel numbers (Attachment L); and
- (f) A soils report and a color-coded soils map containing a list of soil mapping unit names, symbols and land capability classes on the application property (Attachment E).

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