

2011 Application Policy Questions

1.) STEP 3C

Context:

a) Question as it reads on the 2010 AEPP Application:

If this application covers more than one parcel, are the parcels contiguous?

b) Comments from Stakeholders:

- “Why does the entire farm need to be included? Why can’t you apply what portion of the farm you want to the application? (A change would affect the Guidelines and Policies document).”
- “Should we continue to mandate that all contiguous acreage be placed in the easement if under the same ownership? Ex: Landowners could choose to not submit land if it is 1.) a separate parcel, 2.) is no more than 10 acres, AND 3.) contains residential or commercial structure(s). This would allow landowners more flexibility, which is critical to farm viability. (a) Easement land can be more difficult to obtain mortgages on than unencumbered land. (b) Generational transfers often involve only bare ground, while the parents remain in their home. This can be a component of the landowner’s estate planning (c) Commercial facilities can include agricultural support facilities owned by family farms which are inappropriate for protection through this program. This would allow those farms to participate (d) These areas (residential & commercial) may not be eligible to participate in the agricultural district program, which conflicts with other requirements (e) Why pay for “developed areas” if the landowner would prefer to exclude them?”

c) Previous Advisory Board Discussion, 8/18/10 Minutes:

Some members felt that a landowner should then take that into consideration prior to applying for the program and that changing this requirement would substantially change the purpose of the program. Others felt that the program should be flexible and consider changing the contiguous parcel policy. The Board felt that the issue should be looked at further at another time.

OFP Recommendation:

The OAC 901-2-02 (A)(5) states:

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.

We have interpreted this as meaning all contiguous parcels owned by the same legal entity must be included within an application. A landowner needs to consider the implications for his future prior to submitting an application. Given that a change in this policy could impact the purpose of the program, we recommend keeping the contiguous parcel policy as it is currently interpreted.

2.) STEP 12

Context:

a) Question as it reads on the 2010 AEPP Application:

12A: The Applicant Farm's physical location relative to other agricultural, natural resource, open space, or forested land permanently protected by an agricultural or conservation *easement*. *If none please fill in "None" in Property Type. (Maximum Points = 7.5)*

12B: The Applicant Farm's physical location relative to other **non-easement** protected land compatible with agriculture. These lands include the following: protected wetlands, public parks/forests, airports, military bases, wildlife areas, natural preserves, prison farms, historic or archaeological sites, conservancy parks, reservoirs, well fields, battlefields, flood pools*, publicly-owned agricultural research lands, and protected well heads. *If none please fill in "None" in Property Type. (Maximum Points = 2.5)*

For 12c and 12d, the total points cannot exceed 5.0. The applicant will be given credit for the points awarded for the response to either 12c or 12d, but not both, depending on which returns the higher point value. For example, if the applicant earns 3.0 points in Question 12c but only 2.0 points in Question 12d, the applicant will receive 3.0 points.

12C: The Applicant Farm's proximity to two or more adjacent (within 10,560 feet) farms, including the applicant farm, that are applying in the 2010 AEPP Funding Round to sell an agricultural easement. *If none please fill in "None" in Property Type. (Maximum Points cannot exceed 5.0)*

12D: Single Larger Farm – A single larger farm consisting of 100 acres or more applying to sell an agricultural easement, without any neighbors applying, can receive points under this section because larger farms contribute to a community's farmland preservation efforts. *(Maximum Points cannot exceed 5.0)*

b) Comments from Stakeholders:

- “Currently, only 10 points are awarded for proximity as described in 901-2-05. An additional 5 points is awarded for large farm size, or proximity to other AEPP applicants. However, in order to meet the intent of the program and create large blocks of protected land, it seems that the proximity consideration outlined in 901-2-05(2) should be given at least 15 points, and then farm size and proximity to other AEPP applications awarded points over and above the 15 for straight proximity.”

c) Previous Advisory Board Discussion, 8/18/10 Minutes:

The Board reiterated that questions 3C, 14D, and Step 12 would need to be revisited at another time, which wouldn't impact the 2011 application but could possibly impact the 2012 application.

OFP Recommendation:

The OAC 901-2-05 (C)(2) states:

Protected areas. Range: fifteen to thirty points. Emphasis for matching grants is placed on land that is adjacent to or in close proximity, as mathematically defined by the director to agricultural land or other land that is conducive to agriculture, whether such land is in the process of being protected or is already permanently protected such that a buffer from development exists between land proposed for agricultural easement and areas that have been developed or likely will be developed for purposes other than agriculture. These protected areas include, but are not limited to, the following:

- (a) Agricultural, natural resource, open space, or forested land that has already been permanently protected from development through agricultural or conservation easements:
- (b) Flood pools, and other normally undevelopable waterbodies.
- (c) Parks, open spaces, forests, nature preserves and other natural areas that are not protected from development through conservation easements but have permanent deed restrictions or other restrictions which the director determines could protect agricultural land.
- (d) Publicly owned agricultural research lands that the director determines could protect agricultural land.
- (e) Airports, military bases, or other developed areas that the director determines could be appropriately buffered by agricultural land.

There was only one comment received regarding this section of the application, therefore, we do not believe this warrants a major point redistribution. We can keep this on our radar and consult with our stakeholders and request additional opinions on this subject at the 2011 Technical Meeting.

3.) STEP 13C

Context:

a) Question as it reads on the 2010 AEPP Application:

Select the one item which indicates the applicant property’s proximity to any *roadway intersection* listed on the most current available form of the Ohio Department of Transportation’s official statewide highway map at <http://www.dot.state.oh.us/maps/Pages/default.aspx> - to be measured by public roadway distance from the nearest road frontage boundary of the farm property (*Maximum Points = 2.0*)

Question as it is PROPOSED to read on the 2011 AEPP Application:

Select the one item which indicates the applicant property’s proximity to any *freeway interchange* by utilizing the Ohio Department of Transportation’s map at <http://www.buckeyetraffic.org/> - to be measured by public roadway distance from the nearest road frontage boundary of the farm property (User must utilize zoom controls in the top-left corner of the map or use the mouse to get a more detailed map of the applicant farm’s location). (*Maximum Points – 2.0*)

***In both instances, the distances and point structure are the same:**

Within 1,500 feet or More than 22,001 feet (0 points)

Between 1,501 and 3,000 feet or Between 20,001 and 22,000 feet (0.5 points)

Between 3,001 and 5,000 feet or Between 18,001 and 20,000 feet (1 points)

Between 5,001 and 7,000 feet or Between 16,001 and 18,000 feet (1.5 points)

Between 7,001 and 16,000 feet (2 points)

b) Comments from Stakeholders:

- Local Sponsors comments that led to the proposed change in verbiage for the 2011 Application:
 - “This question is inconsistent with OAC section 901-2-01 (DD). ODA defines these as “closest roadway intersection depicted on State Highway Map.” Interchanges, as stated in the OAC, refer to roadway intersections that feature a change in grade as opposed to common intersections, which do not feature a change in grade. The point system has been designed for the current implementation, so either the scoring methodology or the OAC need to be revised.”
 - “This section lists “freeway interchanges” as a factor to determine development pressure. This should remain the same and the AEPP application should be changed to reflect this language. Currently in the application, farms are penalized for being near state route intersections, which are not the same as “freeway interchanges.” Being near state route intersections does not indicate development pressure, and it can actually be beneficial to farms to be near such transportation networks. “Freeway interchanges” is a more appropriate measure of development pressure.”
- A local sponsor has raised concerns about the new wording (freeway interchange) given the unchanging point structure. Definitions for Interchange and Intersection are defined as follows:
 - “Interchange” means both a junction of two or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams, and a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels. OAC 5501: 2-2-01 (N)
 - “Intersection” means the intersection of a state or United States highway and any other dedicated public highway as found in section 4511.01 of the Revised Code. OAC 5501: 2-8-01 (KK)
 - “Freeway” means a divided multi-lane highway for through traffic with all crossroads separated in grade with full control of access. OAC 5501: 2-2-01 (K)

c) Previous Advisory Board Discussion, 8/18/10 Minutes:

The staff recommended changing the words Roadway Intersection to Freeway Interchange based upon local sponsor comments. The Board agreed with the recommendation.

OFP Recommendation:

We recommend that the wording in the 2010 Application should remain unchanged for the 2011 Application, unless further review from experts results in the need to change the question and/or point structure. We are asking Advisory Board Member Tom Mazur for assistance in reviewing Step 13C.

4.) STEP 15A

Context:

a) Question as it reads on the 2010 AEPP Application:

Has the local government adopted a comprehensive land use plan that was written within the past seven years? (*Maximum Points = 3.0*)

Question as it is PROPOSED to read on the 2011 AEPP Application:

Has the local government adopted a comprehensive land use plan that was written or revised within the past seven years? (*Maximum Points = 3.0*)

b) Comments from Stakeholders:

- “Since the Balanced Growth program is taking root in some watersheds in Lake Erie and now around the state, I suggest that AEPP consider providing 10% of the authorized funds for program be set aside for applications from state endorsed balanced growth watersheds and jurisdictions or some other way which incorporates the watershed balanced growth plans.”

c) Previous Advisory Board Discussion, 8/18/10 Minutes:

No discussion regarding the Balanced Growth Program at the previous board meeting although the program has been mentioned at other board meetings. Kristen serves on the State Agency Working Group for the Balanced Growth Initiative and the program is looking for other program’s support to encourage and incentivize watersheds to partake in this holistic type of planning.

OFP Recommendation:

The OFP recommends the question be reworded as follows: “Has the local government adopted a comprehensive land use plan that was written or revised within the past seven years – or – is the farm located within an approved Watershed Balanced Growth Plan?”

5.) STEP 15B

Context:

a) Question as it reads on the current AEPP Application:

Is the applicant property located within a specific area designated for agricultural use by the comprehensive land use plan? (*Maximum Points = 5.0*)

b) Comments from Stakeholders:

- “Since the Balanced Growth program is taking root in some watersheds in Lake Erie and now around the state, I suggest that AEPP consider providing 10% of the authorized funds for program be set aside for applications from state endorsed balanced growth watersheds and jurisdictions or some other way which incorporates the watershed balanced growth plans.”

c) Previous Advisory Board Discussion, 8/18/10 Minutes:

No discussion regarding the Balanced Growth Program at the previous board meeting although the program has been mentioned at other board meetings. Kristen serves on the State Agency Working Group for the Balanced Growth Initiative and the program is looking for other program’s support to encourage and incentivize watersheds to partake in this holistic type of planning.

OFP Recommendation:

The OFP recommends the question be reworded as follows: “Is the applicant property located within a specific area designated for agricultural use by the comprehensive land use plan – or – is the applicant property located within a Priority Conservation Area (PCA) or Priority Agricultural Area (PAA) in an approved Watershed Balanced Growth Plan?”

6.) GUIDELINES AND POLICIES – 40 Acre Minimum

Context:

a) Stakeholder Comments

- “Why limit the farm acreage to 40 acres? FRPP does not have that rule any longer.”

b) Previous Discussion, 8/18/10 Minutes:

The Board recommends keeping the 40 acre minimum but would like to revisit the issue before the 2012 funding round.

OFP Recommendation:

OFP recommends keeping the 40 acre minimum for AEPP. The proposed 2nd Farmland Preservation program should seek to reach the smaller farms.

7.) GUIDELINES AND POLICIES – Large Farm Exception

Context:

a) Stakeholder Comments

- “There are relatively small amounts of funds that many young farmers are able to leverage and this hurts their ability to purchase the large protected tracts. When all contiguous parcels are locked under one easement, it could make it difficult for the landowner to sell. I suggest that county average farm sizes be taken into consideration.”

b) Previous Discussion, 8/18/10 Minutes:

After discussion, the Board made a recommendation to consider the large farm exception eligibility as 400 acres or two times the average county farm size.

OFP Recommendation:

The Large Farm Exception acreage minimum should stay the same: “Farms composed of no less than 400 acres may request the one-time option to split the farm into two parcels of approximately equal size.”

Upon further review, we found that county average farm size varies considerably throughout the state, in some cases being so small that large discrepancies can occur. As an example, the average farm size in Cuyahoga County is only 23 acres. This would mean a Large Farm Exception consideration could be made for a farm at just 46 acres in size. Portage County has an average farm size of 96 acres, meaning a consideration would be made at 192 acres. Please refer to the Average Farm Size spreadsheet provided with November 3 Advisory Board documents.

We believe the stakeholder comments hold merit, and we intend to gain more input on this policy at the 2011 Technical Meeting.

Timeframes for Clearing Exceptions

The local sponsor and/or the landowner will be responsible for clearing and/or subordinating all interests that limit the title of a property, such as mortgages, leases, liens, restrictions, or legal or equitable interests, unless exempted by the director. The most common are listed below with requested completion timelines.

- Oil & Gas Extinguishment – 6 months (see following section on procedures)
- Subordinations – 3 months
- Signature Authority – 2 months

At the end of the given timeframe, clearing and/or subordination will be complete. If requested items are not complete, notification is due to ODA to demonstrate progress on clearing/subordinating the exception, along with a request for extension. If progress has not been made to clear/subordinate the exceptions or is unsatisfactory, the Director may disqualify the application.

Oil and Gas Leases

Plan of action is needed on two types of leases: 1.) Historic (Inactive) and 2.) Active

- 1) If there is NOT an active oil and gas lease, this farm will go through the federal program if funding allows it to do so
 - If there are any historic leases present, these must be extinguished in order to be eligible for the federal program
 - Active oil and gas operations with landowner-retained oil and gas rights may qualify for FRPP funding.
- 2) If there is an ACTIVE oil and gas lease, this farm will require a state deed
 - Each active lease will be reviewed (by the executive director and the asst. AG) to make sure it is acceptable for the state program
 - No need to extinguish inactive leases if there is a current lease governing that piece of the property. (Rationale: the active lease controls the mineral interest anyway – any existing mineral interest would impact the interest of the current lessee, not the lessor/landowner/state)

11-3-2010

Note: This document may be updated to meet State and Federal Program Guidelines and Policies

Fast-Track Discussion

Kaizen Results

Kaizen, which had the purpose of saving time on the AEPP Process, resulted in several discussions and documents coming to the Advisory Board for approval, including today's Exception Policy and 2011 Guidelines and Policies documents. Another resulting discussion was on Fast-Track Incentives. The Kaizen group recommended that landowners be provided either a financial and/or point incentive if they submit a title search with the application. Some may have a clear title search, and these would go into a federal deed track.

OSU Survey

Following is a comment from the AEPP Survey conducted by OSU: "Most common calls for improvement of AEPP were to speed up the process and to make the application less confusing. Part of the frustration over the delay in easement process could be associated with the matching of the federal Farm and Ranch Lands Protection Program to AEPP funds, which has been known to slow down the process."

Last Board Meeting

After discussion, it was felt that perhaps the fact that the process would be faster is incentive enough. Providing points for producing a clear title seems to incentivize those with money available to have the title search done upfront. Some board members felt that there should be an incentive, while others felt it would change the program too greatly. The board opted to not provide points or money to landowners for doing their own title search prior to applying.

Developments Since the Last Board Meeting

1) Kaizen Group Conference Call

The fast-track issue was discussed in a recent conference call. The group felt strongly that this issue needs to go back to the Advisory Board again for another discussion/review. They felt it was a significant timesaver, and that it would impair ODA's ability to save time in the AEPP process, if not adopted.

2) Title Search Contractor

It was recommended by the board as an alternative to adopting the fast-track incentive to instead allow landowners to contract their own title services. This issue has been discussed by OFP, ODA Legal staff, and Mark Forni. Both ODA's Legal staff and Mark Forni are continuing to analyze this suggestion.

OFP Talking Points

- Will ODA accept the landowner's title search results? Would this raise concerns about the quality of the title search and the longevity of the title company/insurance?
- If incentives are provided does this strengthen the inequities of the program?
- What incentives would motivate individuals to take advantage of the clear title fast track?
- Time constraints: OFP has limited staffing; it takes 2 years to close an easement
- Landowner and/or Local Sponsor will be taking on more responsibility to help clean the title

News and Office Updates

Donation Program

Three Richland County farms closed in late August. The farms are owned by sisters Betty Shultz (1 farm: 142.5 acres) and Carol Bernhardt (2 farms: 74.08 and 93.75 acres).

Fifty-two farms have been preserved through the donation program (as of Oct. 18, 2010) totaling 6,310 acres. Donations have continued to be slow. Interest has been shown by two landowners - 1.) McKirgan in Morrow County (about 500 acres), awaiting renewal of the tax incentive; and Kauffman in Logan County (about 300 acres), awaiting estate changes and planning.

Staff believes that the low interest is due to the enhanced tax incentive not being renewed by the U.S. Congress. The most up-to-date information can be found on the Land Trust Alliance's Web site, www.lta.org.

Per suggestions by the Advisory Board from the last meeting the Donation Guidelines and Policies is under review to explicitly state the minimum timeframe needed to secure a donated easement. This document should be uploaded to ODA's Web site with changes by the beginning of 2011.

The Wagner Family called this week to express interest in donating a farm in Allen County. Emerson and Connie Wagner previously donated easements on two farms in Shelby County. This would be the first state easement, donated or purchased, in Allen County and West Central Ohio Land Conservancy has expressed interest in being the monitoring agent.

2009 Clean Ohio AEPP

One Ashtabula County farm, Britton GT Farms Ltd., has withdrawn from the program. The owners did not wish to comply with conservation plan requirements, and chose to withdraw versus not meeting the terms of the deed. This farm was slated for FRPP funding. The FRPP funding will not be applied to or re-distributed among the remaining AEPP farms.

We have had one closing: Thomas & Gretchen Tedrow, Fulton County, a state deed. The expedited closing was prompted by concerns of the landowner. In order to close quickly, the 2008 state deed was used for the farm. Local sponsor is Black Swamp Conservancy; staff attended the closing to represent the state. The Tedrows expressed their appreciation for expedited closing timeframe.

We are working on possible deed changes for the Roger Voge farm (Preble County), in order to accommodate the existing SprintComm lease. Although we had proposed using a subordination form, the SprintComm legal representative views the deed wording change as the only viable alternative as they do not wish to subordinate their interests to the state. There are a couple areas of concern: 1) Paragraph 4.2 of the

easement prohibits the construction of new utility poles or telecommunications towers; and 2) Paragraph 5.11 only allows the construction, installation, etc. of utilities to service any improvements on the property, not for public use. Basically, the easement prohibits the installation of new, or relocation, maintenance, repair, etc. of existing utilities, inhibiting the use of the site for Sprintcomm's purposes.

Update on Voge easement: After review, NRCS has decided to allow the SprintComm lease to remain on the title without changes to the deed or subordination. ODA continues to work on this issue.

Staff continues to prepare for closing on the remaining 35 farms. An additional requirement, new to the program, is to take a closer look at all utility easements on the title work. We are working closely with Matt Harbage (NRCS) and our attorney to ensure we meet all the necessary title requirements.

2010 Clean Ohio AEPP

37 farms were selected for the 2010 AEPP; nine of these farms are slated for FRPP funding. Since the last Advisory Board meeting, in the northeast quadrant, the Cox farm has accepted an offer, and the Jagers farm has officially withdrawn.

Our attorney is working on title reviews of the 37 farms, and staff has begun the initial processing of title issues by contacting the local sponsors for assistance. The ODA news release announcing the 2010 AEPP farms was sent Sept. 28. Thank you letters to landowners who were not given an offer and to all local sponsors were mailed on Sept. 28, which marks the official end of the 2010 funding round.

Century Farm

We haven't had any inquiries or applications yet from the three counties without Century Farm registrations – Athens, Noble, and Pike. Staff continues to work on ideas for outreach to these counties. Current count is 831 farms registered.

Media interest in Century Farms has picked up recently: Ohio's Country Journal and two radio stations have contacted us for information. WKBN interviewed Cindy on the Raymond & Nelda Anderson farm in Mahoning County.

AEPP Survey

Per the Advisory Board's suggestion, a cover letter, to accompany the Executive Report, for legislators highlighting that satisfaction with the program was high and show how we are addressing suggestions for improvement was created. The cover letter and Executive Report was distributed to ag-related committees as well as the Governor and First lady's offices at the end of August. A copy of the distributed cover letter, Executive Report, and slideshow about the survey and its findings are available on ODA's Web site.

Second Farmland Preservation Program

The Board was provided with the proposed legislation that will be attached to ODA's budget bill. The second program's purpose is to involve important Ohio farms in

farmland preservation that are shut out of the Clean Ohio AEPP. The second farmland protection program proposes to prioritize the following:

- (i) Prime, unique or locally important soils, microclimates, or similar features;
- (ii) Land that is important due to its unique agricultural use and location;
- (iii) The use of best management practices, including federally or state approved conservation plans, and a history of substantial compliance with applicable federal and state laws in relation to its unique agricultural importance or attributes;
- (iv) Incorporation of social, environmental, and economically viable practices;
- (v) Areas identified for agricultural protection in local comprehensive land use plans.

Rules have yet to be developed. A suggestion was made that perhaps a subcommittee of the Board could be performed to make recommendations on the rules for the program. Stakeholder input would also be important. Rules preparation will not begin until authorizing legislation is passed.

Deed of Agricultural Easement

The OFP has done an extensive review of the deed for farms within the 2009 funding year and beyond. This process began once FRPP explained that a template deed could be approved and be used for multiple farms without multiple reviews. The OFP updated the deed with the main purposes of 1.) Complying with the new Farm Bill requirements, and 2.) Be more understandable/readable for the average person.

The first template went under review by the feds in the beginning of February. It was returned at the beginning of April. Additional changes were made and the deed was re-submitted at the beginning of June. The deed came back approved October 12. Additional changes will be submitted within the next few days. We expect this to be the final review. Once finalized, the OFP will send 2009 landowners finalized copies of their deeds. In addition, the State and Donation template deeds will receive changes to reflect the changes within the federal deed and the OFP will hold a deed information session for all interested parties.