



Clean **Ohio** Fund

**Farmland Preservation**

**Agricultural Easement Purchase Program  
Applicant Handbook**

Second Edition  
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### **Purpose of this Handbook**

This Handbook was written by the Ohio Department of Agriculture's Office of Farmland Preservation to help local sponsors with the process of assisting farmland owners who wish to participate in the Clean Ohio Fund Agricultural Easement Purchase Program (AEPP). Local sponsors include county commissioners, township trustees, municipal councils, or charitable organizations (non-profit organizations, land trusts, and land conservancies), which must apply for state grant funds on behalf of landowners.

It is anticipated that local applicants will seek the assistance of professionals on their staff or in their community to help with the application process. These professional representatives may include local farmland preservation office coordinators, county planners, soil and water conservation district staff, Ohio State University (OSU) Extension agents, or private consultants. While the intent of this Handbook is to help local sponsors and their professional representatives complete applications and understand the process of selection, landowners and supporting professionals may also find information in this Handbook helpful. Local sponsors are encouraged to share this Handbook with landowners and other partners interested in agricultural easements.



# **Applicant Handbook**

## **Chapter 1 – Overview**

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

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

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

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

*outlines general information about online application*

## **Chapter 4 – How to Apply**

*describes in detail how to apply to the program*

## **Chapter 5 – Frequently Asked Questions**

*includes frequently asked questions by applicants and landowners*

## **Chapter 6 – Appendix**

*contains an appendix with pertinent documents to the Clean Ohio AEPP*



# **Chapter 1: Overview**

**Why Preserve Ohio Farmland?**

**Agricultural Easements**

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

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





### Why Preserve Ohio Farmland?

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

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

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

The obvious question at this point is "so what are the implications of Ohio's loss of farmland?" Of utmost importance are the financial implications. Land is at the heart of agriculture, and farmland preservation is at the center of maintaining the state's agricultural heritage which provides food, energy, products, and jobs. Food and agriculture together constitute the state's largest industry, contributing more than \$98 billion annually to the state's economy and providing jobs to one in seven citizens.

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

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

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

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

### **Agricultural Easements**

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

An agricultural easement is a voluntary legal agreement between the landowner, state, and local entity for the purpose of agricultural conservation. The restrictions of the easement prohibit the conversion of the land to non-agricultural uses and are binding on all future owners of the property. The landowner who gives up these "development rights" continues to privately own and manage the land and may receive significant federal tax advantages for the easement. In addition, the landowner has contributed to Ohio's public good by preserving the agricultural values associated with the farmland for future generations.

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

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

## Chapter 1: Overview

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

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

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

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

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

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

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

- Easements must be carefully drafted to ensure that the terms allow farmers to adapt and expand their operations and farming practices to adjust to changing economic conditions.

- Monitoring and enforcing easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.
- Agricultural easements do not offer protection from eminent domain. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.

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

- **History**

Ohio is the 19th state to offer a statewide agricultural easement purchase program. Although the state considered farmland preservation benefits during the 1970s, it did not initiate a program. During the 1980s and early 1990s, a grassroots movement created a focus on growth management, traffic congestion, land use conflicts, sprawl, etc. This movement led to a renewed interest in land use policy and farmland preservation programs.

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

In January 1999, Senate Bill 223 was signed into law, making it possible to create an agricultural easement purchase program. This law enabled the Ohio Department of Agriculture, local governments, and nonprofit organizations to hold, acquire, and accept agricultural easements. It specified that the program would be voluntary, but it did not provide funding. In effect, SB 223 provided the legal basis for establishing the Clean Ohio Fund's AEPP, as well as the Ohio Agricultural Easement Donation Program.

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

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

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

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

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

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

The Clean Ohio AEPP provides grants to farmland owners for placing an agricultural easement on their property. Awards are issued for up to 75 percent of the points-based appraised value of a farm's development rights. A payment cap has been set at \$2,000 per acre, with a maximum of \$500,000 per farm. All easement transactions are permanent, are recorded on the property deed, and transfer with the land to successive owners.

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

**Benefits of the AEPP program include:**

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

**Challenges of the AEPP program include:**

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

# Chapter 2: Players and Roles

## Players and Roles

### Application Process: Pre-Selection

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





### Players and Roles

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

1.) The local sponsor or applicant

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

A landowner cannot submit an application to sell an agricultural easement directly to the ODA. The Ohio legislature requires applications to be submitted by the local government unit or qualified conservation organization on behalf of the landowner in order for the nominated property to be considered for agricultural easement purchase. ODA recommends that the local government that has zoning authority over the nominated property serve as the applicant. However, if there is no zoning over the property, the county government may be in the best position to submit an application. If the local government or conservation organization declines sponsorship, there is no appeals process for the state to overturn the local decision. Applications submitted directly by the landowner will not receive consideration.

2.) The landowner

The landowner decides whether to participate in the program and chooses the local sponsor to submit an application.

3.) The Ohio Department of Agriculture (ODA)

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

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

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

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

## Chapter 2: Players and Roles

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

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

# **Chapter 3: About the Application**

**The Application Process**

**Lands Eligible for Purchase of Agricultural Easement**

**Before Starting the Application**

**Guidelines and Policies**

**Ranking System**

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

**Finalists**



## Chapter 3: About the Application

### The Application Process

Significant program deadlines for 2009 are:

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

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

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

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

### Lands Eligible for Purchase of Agricultural Easement

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

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

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

*the federal government.*

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

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

### **Before Starting the Application**

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

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



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

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

ODA's Web site, [www.agri.ohio.gov](http://www.agri.ohio.gov), provides links for the above information.

#### **Guidelines and Policies**

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

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

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

### Chapter 3: About the Application

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

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

### Ranking System

The Ohio General Assembly has provided explicit guidance concerning the scoring of applications to determine which farms will be permanently preserved under the Clean Ohio AEPP. For more details see Ohio Revised Code 901.22 and Ohio Administrative Code 901-2. In the Two Tier ranking system, which was developed with stakeholder input, Tier One criteria total 100 possible points and Tier Two totals 50 possible points. Refer to the application located on ODA's Web site for specific questions relating to these priorities, as well as the point distribution within each section.

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

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

- 1.) **Soil type:** The rules give preference to farms that involve the greatest proportion prime soils, unique or locally important soils, microclimates, or similar features. This information must be provided by the local SWCD or NRCS representative. A designation of 'unique' or 'locally important' may be pursued by working with the county's USDA district conservationist and the county commissioners. The purpose is to protect the most agriculturally productive and conducive soils. This section is Step 18 within the application. (20 points)  
**Proximity to other agricultural land:** The rules give preference to land that is adjacent to or in close proximity to other agricultural land or land that is conducive to agriculture. This includes lands that are, or in the process of becoming, permanently protected from development by agricultural easement or otherwise, so that a buffer would exist between the land involving the proposed agricultural easement and areas that have been developed or likely will be developed for purposes other than agriculture. The purpose is to ensure long-term farm viability. This section is Step 12 within the application. (15 points)
- 2.) **Use of best management practices:** The rules give preference to farms

which have federally or state approved conservation plans and a history of substantial compliance with applicable federal and state laws. The highest ranking is given to farmland with established and implemented conservation plans. This information must be provided by the local SWCD or NRCS representative. This section is Step 17 within the application (5 points)

- 3.) **Development pressure:** The rules give preference to land that is imminent, but not currently, in the direct path of urban development. This is often referred to as intermediate development pressure and includes farms that are neither directly in front of the bulldozer, nor far from development's fringe, but rather farms that are midway between intense pressure and no pressure at all. This development pressure exists throughout much of Ohio's more rural areas, as well as around major metropolitan areas. This section is Step 13 within the application. (15 points)
- 4.) **Local comprehensive land use planning:** The rules give preference to areas identified for agricultural protection in local comprehensive land use plans. These points are awarded as an acknowledgement of the importance of local efforts to manage growth and preserve productive farmland. This section is Step 15 within the application (16 points)
- 5.) **Other criteria:** The rules allow for the director to determine other preferential criteria for selecting applications. This information has changed over the years but allows for flexibility for unique situations and extension of the program's funds. This section is Step 14 within the application. (29 points)

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

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

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

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

### Chapter 3: About the Application

#### 5.) Examples of sustainable agriculture on the farm.

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

#### **Finalists**

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

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

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

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

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

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



# **Chapter 4: How to Apply**

**Creating a New Account**

**Log In and Complete the Application**

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

**How to Copy a Previous Year's Application to 2009**

**Printing the Application**

**Attachment Checklist**

**Submitting an Application**





## Chapter 4: How to Apply

### Creating a New Account

To create a new application or to work on one that you've already started, log into one of two accounts on the left margin either a **Local Sponsor** account or a **SWCD/NRCS** account. This designation will depend upon your role in the application process. The first step is to create an account as one of these two entities ("New Local Sponsor" or "New SWCD/NRCS").

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

The original Local Sponsor login from a previous year must be used in order to copy information from a previously submitted application. See "How to Copy a Previous Year's Application to 2009" below.

### Log In and Complete the Application

- **Local Sponsors**

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

As each step of an application is completed, click "Save" at the bottom of the page. This will allow you to return to the application for editing at a later time. Please do not click "Submit" until you are ready to submit an entire application (The system will not allow a user to submit an application until steps 1-20 are complete).

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

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

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

- **SWCD/NRCS**

After logging into the system, the **SWCD/NRCS** representative will be able to complete Steps 17 and 18 of an application. Once the SWCD/NRCS representative has logged into the system, a “Farm List” will appear listing all applications that have been started or submitted. To work on an existing application, select “Edit” next to that farm. To create a new application click on “Add a New Farm.”

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

It is important while completing Steps 17 and 18 of an application to click “Save” at the bottom of the page. This will allow you to return to the application for editing at a later time without losing previous work. The application will save only an entirely completed step. The system will not allow a user to submit an application until both the Local Sponsor and SWCD/NRCS have collectively completed Steps 1-20.

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

### **How to Copy a Previous Year’s Application to 2009**

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

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

- 1.) A “Farm List” will appear listing all applications that you previously submitted
- 2.) Select the desired farm on the list, and click “Copy.”
- 3.) A copy of that farm will appear on the bottom of the list. This will be the copy that you will re-submit (Note: This copy will be assigned a different “FarmID” than the original. You will effectively be submitting a new farm for 2009, but with a great deal of information from the previous year(s) automatically entered into it.)
- 4.) Click on the “Edit” button of this copy, which will allow you to open, edit, and submit the application. Not all information will copy from year to year.

Please note that all submitted 2009 AEPP applications are subject to the same requirements, regardless of whether information was duplicated from previous

## Chapter 4: How to Apply

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

### Printing the Application

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

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

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

The application is not complete until the printed version of the application includes all necessary signatures for Step 20.

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

### Attachment Checklist

Once the application is printed there are items that need to be attached in order to complete the application. The “Attachment Checklist” includes information at the request of the ORC in order to provide enough information to understand and certify the characteristics of the farm. The items are listed below:

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

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

## Chapter 4: How to Apply

following additional information:

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

### Submitting an Application

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

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



# Chapter 5: Frequently Asked Questions

## Frequently Asked Questions/Concerns

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





## Chapter 5: Frequently Asked Questions

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

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

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

By conveying an agricultural easement, a landowner gives up one of the property rights, the right to develop the land for non-agricultural purposes. The landowner continues to hold the remaining property rights of the land, such as the right to possess the property, the right to sell or transfer the property, the right to pass the property to heirs and descendants, the right to receive income and profits from the land, the right to exclude others from the property, and the right to mortgage the property (with limitations).

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

Ohio law states that agricultural easements purchased with state money through the Clean Ohio AEPP must use "perpetual" easements. A perpetual easement is one that remains with the land forever. If the landowner sells or transfers land on which there is an agricultural easement, the agricultural easement is binding on the new owner as well as on all subsequent owners of the land. There is an extinguishment clause within the deed but the purpose of the agricultural easement is that the land remains in agricultural activity permanently.

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

Generally, minor improvements and changes to the property are permissible. Major changes and construction of new buildings or houses may require permission of the holder of the agricultural easement. The landowner will enter into a Deed of Agricultural Easement, which will address in detail specific improvements or building construction that are permissible, that require permission of the holder, or that are prohibited. A sample of this deed can be found in the appendix.

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

For farm program payments and other programs that require active involvement in the operation and risk bearing, the agricultural easement does not affect the landowner or the tenant's eligibility for the program. The state and local holders of the agricultural easement do not actively participate in the farming operation and do not assume any of the risk associated with the farming operation. Program interests will be subordinate to the Deed of Agricultural Easement.

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

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

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

Generally, a landowner may continue to operate the farm in the same manner as prior to the conveyance of the agricultural easement, and may undertake changes in the operation as long as they are not prohibited in the Deed of Agricultural Easement. Major changes in the farm operation, such as an expansion or a new enterprise, may require approval from the holder(s) of the easement.

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

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

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

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

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

No, an agricultural easement does not prevent the use of eminent domain on the property. However, property that is in the Clean Ohio AEPP and the Agricultural District program will be subject to a higher level of scrutiny should there be an attempt to take the land by eminent domain. The director of agriculture is authorized to render an opinion on the effect of the eminent domain action on the agricultural area, and the entity seeking to take the land must consider the director's opinion in its final decision.

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

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

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

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

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

Yes, you may sell, trade or gift the land to a new owner after the development

## Chapter 5: Frequently Asked Questions

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

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

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

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

The local applicant may also pursue the federal matching program known as the FRPP. This program is available through the USDA, NRCS. In addition, the local applicant may also use private funds to leverage the local match. Any federal or private dollars received by the local government must be deposited into a special fund solely to be used for the purchase of agricultural easements.

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

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

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

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

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

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

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

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

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

## **Chapter 6: Appendix**

**2009 Guidelines and Policies**

**Advisory Board Scoring Guide**

**Sample Resolution**

**Sample Deed of Agricultural Easement**

**The following pages have been intentionally left blank for the online version so that the document loads faster.**

**All documents listed in this appendix are available online as individual documents. Please see our website.**