

**2015 Clean Ohio Local Agricultural Easement Purchase Program (LAEPP)  
Technical Meeting Notes**

Bromfield Building, Auditorium A&B  
Ohio Department of Agriculture  
Reynoldsburg, Ohio

September 9, 2015

Notes taken by Amanda Bennett

Note: Many individual opinions are captured by the recorder but do not necessarily reflect the opinions of the entire group.

**Attendees:** Malcolm Miller, Megan Chapman, Dan Jackson, Jonathan Ferbrache, Andy Simmons, Pat Deering, Bill Roshak, Krista Magaw, Michele Burns, Chris Szell, Pete McDonald, Joanie O'Brien, Alex Czayka, Julia Cumming, Jill Shriver, Lisa Schott, Larry Frimerman, Laura Curliss, Cathy Jerbic, Steve Goodwin, Michelle Mattix, Amy Cameron, Tim Hansley, Scott Stephens, Maurine Orndorff, Chris Collier, Lisa Crock, Kreig Smail, Linda Raterman, Samantha Ackerman, Abigail McClain, Barb Baker

**ODA Staff Members:** Denise Franz King, Executive Director; Jody Bowen, Amanda Bennett, and Jake Parkinson, Office of Farmland Preservation (OFP); Eric Holyak, Software Developer; David Miran, Senior Staff Counsel; Timothy Schirmer, Senior Staff Counsel.

Denise Franz King, Executive Director of the Office of Farmland Preservation, opened the meeting by welcoming everyone and doing introductions.

**LAEPP Landowner Application**

Amanda Bennett began the review of the LAEPP 2015 landowner application with a summary. She stated that 125 applications were submitted electronically, with 81 hardcopies being received by the Office of Farmland Preservation for review and approval for funding. Pending and contingent easements include several new purchase program counties – Brown, Clermont, Fayette, Hamilton, Medina, Stark.

Amanda provided a brief overview of the LAEPP 2015 landowner application and then announced that a new landowner application software system is being developed with the help ODA's Information Technology (IT) division. The system is expected to be available for testing by Local Sponsors starting December 2, 2015 (date of the LAEPP 2016 Local Sponsor training).

Eric Holyak gave a brief demonstration of the new application software, highlighting items that have been brought up by the Technical Committee in past years and are being addressed in the new software:

- While the current application site was tied to a single user account, the new software allows organizations to have one main account, and several user accounts within it that can be added or even deactivated if someone leaves their position. All user accounts will have access to their organizations' applications, allowing multiple people to work on the same applications at the same time.
- If an application was electronically submitted too early in the past, and needed to be re-opened to make changes during the application period, a Local Sponsor would have to contact the OFP, which in turn would open an IT ticket to have a particular application put back into pending status

so that the edits could be made. With the new application software, Local Sponsors have the ability to set an application back to pending status without having to contact ODA at all.

- While the current application system provides just a laundry list of applications current and years past, the new application system will allow the Local Sponsor multiple ways to filter and sort their applications (by name, by user account, by funding year, etc.). The Local Sponsor also has the ability to export their farm lists to Excel, Word, and PDF formats.
- There were complaints in years past of being kicked out of the system. The new software will not kick a user out and ask them to login again, with the caveat that the system does time-out after 60 minutes of inactivity.
- In the current application, a Local Sponsor was unable to view the data input by their Soil and Water Conservation District/Natural Resources Conservation Service (SWCD/NRCS) representatives (soils and conservation sections) without putting the entire application into a draft print mode and scrolling down to the applicable steps. Local Sponsors will now easily be able to toggle to the applicable step and view the information when it has been completed by their SWCD/NRCS representative.
- A SWCD/NRCS representative no longer has to be contacted by you with certain information to attach the landowner's application to their own SWCD/NRCS account. Now, when a SWCD/NRCS representative creates an account, they can be chosen on an application by the Local Sponsor and receive an email when it is time for them to input their part of the application. Additionally, if the SWCD/NRCS representative is also the Local Sponsor, their application experience will be seamless and allow them to click through to the SWCD/NRCS parts of the application. No need for multiple accounts as both a Local Sponsor and SWCD/NRCS representative.
- The older Farm ID and LSID numbers have been done away with; less unique IDs to remember.
- Additionally, IT and OFP are working on pre-populating soils information by county into the landowner application to make entering this information easier.

A member of the Technical Committee asked that more entry fields be added for multiple landowners.

Barb Baker of NRCS suggested that ODA work with the NRCS Soil Scientist on providing a link between the information needed for the landowner application and NRCS' Web Soil Survey. Amanda noted that reaching out to NRCS has already taken place and that the State Soil Scientist is providing very useful information.

### **Next Steps for 2013 and 2014 LAEPP Local Sponsors**

Amanda reminded Local Sponsors of upcoming deadlines if closing in this calendar year is a priority for them or their landowners.

### **Next Steps for 2015 LAEPP Local Sponsors**

Amanda reminded Local Sponsors to utilize the Process Steps document on the LAEPP 2015 Local Sponsors resources page. Most Local Sponsors are at the step requiring title work to be ordered and sent to ODA for review.

## **5-year ODA Rules Update – Proposed Changes and Local Sponsor Input**

David Miran of ODA Legal explained that the Ohio Administrative Code (OAC) sections related to the LAEPP are due for their five year review. A copy of the proposed changes have been provided to Local Sponsors via email but were also provided at the Technical Meeting. David explained that ODA is about one-third of the way through a six month process. Now that the rules have been revised, they will go to the Office of the Lieutenant Governor and be reviewed under the Common Sense Initiative. The rules then go through the Joint Committee on Agency Rule Review (JCARR) process, which includes public hearings at ODA and the Statehouse. ODA expects the rules to complete their review process and go into effect sometime in January or February of 2016.

David shared with the Technical Committee the changes that have been made; they are mostly to re-organize the rules to better serve the purchase program as it currently operates under LAEPP.

The Technical Committee provided feedback to instruct the OFP and ODA Legal as they prepare to submit the rule changes –

- To look at the section regarding installment payments. One Local Sponsor recalls having difficulty with that in the past and he thought that the program's ability to do that may have been rescinded in the Ohio Revised Code (ORC).
- To review the wording of the area regarding Monitoring Agents and their responsibilities with regard to enforcement. Sometimes individuals serving as Monitoring Agents are not going to be the ones also enforcing the Easement terms.
- To review the requirements for charitable organizations to have to obtain county/township resolutions when the part of the property in those counties or township is minimal (an example was provided of having to obtain a resolution from a township with less than one acre of the property in it).

## **Successful Title Reviews**

Timothy Schirmer of ODA Legal presented to the Technical Committee on what ODA is looking for in a successful title search. He spoke to what ODA needs to complete a title review, and how Local Sponsors can review the title themselves to help speed up the process.

- Chain of title is important to ODA and Local Sponsors as co-holders of the Easement because it informs us of the risks associated with the property.
- When land is owned by a Trust, a Memorandum of Trust (or associated document showing the Trustee's power to encumber the property) is necessary to determine if the Trustee has the authority to enter into an Agricultural Easement.
- When property is owned by a Corporation, a Resolution or other authorization document is necessary but does not need to be recorded.
- Ownership as related to Probate can be more complicated. If ownership has been divided up, ODA needs to be able to account for 100% interest in the property to ensure no one can come forward after the Easement has been placed claiming an interest in the protected property.

- There has been producing oil and gas wells in Ohio dating back to the 1800s. While some title searches go back to Patent, ODA requires a 90 year search by title agents. ODA is looking for things such as property severances (same person that owns the land may not own any or all of the mineral interests) and easements granted within oil and gas leases. Those easements may allow companies to build roads or install structures/pipelines that are harmful to our interest.
- Utility easements and rights-of-way are common but important to note; ODA is looking for the size of the easement, its location, and what requirements exist by way of landowner consent.
- Make sure to review title documents as you receive them. Make sure the search goes back 90 years. Give title agents ODA's title review checklist so that they are aware of what will be asked of them with regard to the search and necessary documentation. The more complete the package is when it is received by ODA for review, the faster the turnaround time.

The Technical Committee asked Timothy about a property's ability to continue with a reverse mortgage. Tim explained that it would have to be considered on a case by case basis as to its impact on an Agricultural Easement.

The Technical Committee expressed concern about general title commitment exceptions that ODA was requesting to be removed or revised prior to the agent issuing the final title policy after closing. Some Local Sponsors felt that it will become harder, if not later impossible, to find agents willing to make these adjustments, particularly with regard to a general exception related to all mineral rights associated with the property, whether it be in the past, present, or future.

Clarification was sought on whether or not ODA and NRCS allow oil and gas leases to exist under their programs; Timothy clarified that ODA allows both active and old oil and gas leases to appear on the title, and NRCS representatives explained that active oil and gas must be very restricted and there has so far been minimal success at restricting such leases.

A request was made that ODA add to the title review checklist the most common general exceptions that ODA will be requesting to have removed or revised from the title policy so that they may show them to potential agents ahead of time.

### **2016 LAEPP Local Sponsor Certification Application**

Denise told the Technical Committee that the 2016 LAEPP Application for Local Sponsor Certification would be available from September 15, 2015 – October 15, 2015. There were only minimal changes to the form, including the removal of the question seeking to know in which quadrant the Local Sponsor operates. The OFP had proposed to remove the question asking if Local Sponsors agree to seeking applications only from local governments with a demonstrated commitment to farmland preservation (most everyone answered yes), but the Advisory Board recommended against this change. The Application for Local Sponsor Certification should be available online to Local Sponsors in the coming days.

## **NRCS Program Update**

Barbara Baker, Assistant State Conservationist for Natural Resources, provided an Agricultural Conservation Easement Program-Agricultural Land Easement (ACEP-ALE) program update to the Technical Committee.

There have been many recent administrative and staffing changes, but NRCS is doing what they can to work through them. With regard to the Fiscal Year 2015 Enrollment, there are expected to be 12 projects receiving federal matching dollars, for 2,355 total acres and with a total federal contribution of \$2,744,190. At this time, the Cooperative Agreements are under review by the internal controls team. Once approved, they will be sent out to Local Entities and must be returned quickly so that the funds may be obligated. The total applications received reached nearly 50, and the requested funds totaled over \$9,000,000.

There is an indemnification language issue that NRCS is working hard to overcome in current Cooperative Agreements and Ag Easement Deed templates. Barbara's office as well as the Easement Support Services (ESS) Team are working to resolve the issue so that projects may move forward.

Barbara shared some tips for entities looking to apply for federal funds in FY 2016 – including how to instruct landowners in completing necessary Farm Service Agency forms during the application process, and resources for completing maps that are to be submitted during the application process.

Barbara went over the types of property that are ineligible for the ACEP-ALE program, as well as requirements relating to appraisals and Easement Deed requirements.

Under ACEP-ALE, every project must now have an Agricultural Land Easement Plan, which incorporates various other types of plans – Grassland Management Plans, Conservation Plans, and Forest Management Plans. As far as is known at this time, the ALE plans do not need to be recorded with the Deed of Agricultural Easement.

Barbara also provided a general update on 2013 and 2014 projects. There is the indemnification-related issue for some projects, and that is being worked on. If an appraisal is received by the Local Entity, it should not be directly sent to a reviewer. NRCS must receive it first so that they can contract with a reviewer for the appraisal. Also, two closing-related items (the SF270 and 230 Confirmation of Matching Funds) now must be completed prior to NRCS being able to initiate the release of funds for closing. If the project involves ODA as a party to the Cooperative Agreement, ODA must also sign the documents.

The Technical Committee commented on the additional reviews that are taking place within National Headquarters that appear to be slowing down processes for the State NRCS office. It was asked if it is known what the 2016 application period dates will be and what the allocation for Ohio will be for FY 2016 – Barbara said these dates and numbers are not yet known, but more should be known after the first of the year. One Local Sponsor asked about who pays for the appraisals. It was confirmed that the entity must order the appraisal, since the landowner ordering it is a conflict of interest. Another Local Sponsor shared that they contract for the appraisal and invoice the landowner after the close of the Agricultural Easement.

The Technical Committee asked how to continue with the LAEPP 2015 easements if their projects do not end up being federally matched; Jody Bowen said that any Local Sponsor can call the OFP to discuss their farm lists and what their funding options are at any time. Finally, a Local Sponsor requested that the OFP share the email addresses of SWCD Technical Committee participants so that these organizations can share information related to landowner donations/fees for their projects.