

**OHIO FARMLAND PRESERVATION ADVISORY BOARD
MINUTES OF BOARD MEETING**

**Ohio Department of Agriculture
Reynoldsburg, Ohio
April 9, 2013**

Minutes taken by Amanda Bennett

*Disclaimer: Many individual opinions have been captured by the recorder but do not necessarily reflect the opinions of the entire Advisory Board.

Advisory Board Members present: Howard Wise, Chair; Brian Williams, Vice-Chair; Peggy Kirk Hall; Lucille Hastings; Dean LaRue; Joe Logan; Timothy Lynch; Jay Rausch; Roger Rhonemus.

ODA Staff Members present: John Schlichter, Deputy Director; Julie Phillips, ODA Assistant Chief Legal Counsel; Denise Franz King, Executive Director, Office of Farmland Preservation (OFP); Amanda Bennett, OFP; Jody Bowen, OFP; Stephanie Estell (ODA Intern); Jake Parkinson (ODA Intern).

Visitors: Jonathan Ferbrache, Fairfield SWCD; Krista Magaw, Michele Burns, and Maura Hauer, Tecumseh Land Trust; Larry Frimerman and Liz Woedl, Three Valley Conservation Trust; Matt Harbage and Danielle Balduff, USDA-NRCS.

Opening Remarks

Meeting called to order at 10:07a.m. by Howard Wise, Chair and Assistant Director of the Ohio Department of Agriculture (ODA). The meeting began with introductions of Advisory Board members, ODA staff, and visitors.

MOTION: Lucille Hastings moved to approve the January 30, 2013 Advisory Board meeting minutes as presented. Brian Williams seconded; Vote 8-0; motion carried.

Update on Current Programs and Projects

Amanda Bennett provided an update on current easement programs and Agricultural Security Areas (ASA).

Agricultural Easement Purchase Program (AEPP) 2010 Funding Round: All easements are officially closed.

AEPP 2011 Funding Round: 41 total easements, more than half closed, 17 remain. We expect nine of those to close with a Federal Deed of Easement, in partnership with Natural Resources Conservation Services (NRCS)' Federal Farm and Ranch Lands Protection Program (FRPP). The seventeen remaining farms tend to have more involved title exceptions (not in all cases, but some), and are taking more time to close than the others.

Agricultural Easement Donation Program (AEDP): 4 easements in Fulton County closed recently. We have also received interest in AEDP recently from landowners in Delaware and Marion Counties.

Agricultural Easement Donation Partnership Program (AEDPP): ODA finalizing Agreement with West Central Ohio Land Conservancy (WCOLC), looking to receive \$3,000 per donation. WCOLC to preserve 3-4 farms under AEDPP in Hancock and Wood counties.

Agricultural Security Areas (ASA): No new ASAs.

Amanda also mentioned that preparations for the online landowner LAEPP application are being finalized with ODA's IT Department. Minimal changes were requested.

Travel Expense Reports

Jody Bowen reminded Advisory Board members about Travel Expense Reports and the sign in sheet.

Local Agricultural Easement Purchase Program (LAEPP) Application for Local Sponsor Certification Update and Scoring Presentation

Before beginning her presentation, Denise Franz King thanked the two OFP interns, Jake Parkinson and Stephanie Estell, for their continued assistance to the OFP. She encouraged Board members to get to know them.

Denise explained that a lot of work over the last year has gone into the LAEPP, to help make the agricultural easement process faster. Howard added that the OFP took on the largest workload of the office's history in the past few years, launching a new program at the same time.

Denise started her PowerPoint presentation, attached as Exhibit A to these minutes. She reminded the Board of the goals for localizing AEPP, and the timeline, which included today's Board recommendations to the Director regarding the certification and funding of Local Sponsors. After the Director has made his final selections, a formal announcement will be made, and ODA will begin Cooperative Agreements with the Local Sponsors. Local Sponsors will then hold their landowner application rounds, beginning May 1, for 30-90 days. The Advisory Board will then need to meet to approve landowner applications selected by Local Sponsors, at this time estimated to be in July or August. There is hope that another LAEPP funding round can begin before the end of the year.

In all, 19 Applications for Local Sponsor Certification were received, representing 45 counties. Ultimately, one application was disqualified as the organization did not meet rule requirements as a nonprofit organization. When discussing these applications by region, Denise asked that the Board think about and share their insights about how participation can be improved in non-represented counties (especially the southeast quadrant) in the future.

A break was taken at 10:35a.m. for photos with Director Daniels.

Meeting resumed at 10:43a.m. Denise continued her presentation, explaining the OFP staff's recommendations for scoring and funding. With an emphasis on encouraging organizations to leverage FRPP dollars at closing, the OFP created a formula that allows all 18 eligible applicants to be funded starting with base allocations as follows:

Single county served: \$75,000; two counties served: \$100,000; three counties served: \$125,000; four or more counties served: \$150,000

After the base amount was applied to eligible applications, the remaining \$900,000 (out of a total funding round amount of \$2.7 million) was distributed based upon the score of the applications:

\$500,000 divided among the applicants scoring above 35; \$300,000 divided among the applicants scoring 30-35; \$100,000 divided among the applicants scoring below 30.

In making distributions above the base, the following formula was used:

Average Market Value (AMV) x Average Farm Size (AFS) x .25 (match required at closing by FRPP) x a reduction factor of .5 (half the normal funding amount is available)

AMV x AFS = _____ x .25 = _____ x .5 = \$ _____

There is a cap on AMV of \$5,000, as some counties have AMV per acre well above the state average of \$5,000/ac for farmland. The idea was to give each Local Sponsor a meaningful award that can be utilized to apply to FRPP and purchase easements.

Denise then shared with the board the list of Local Sponsors in order of scoring (refer to Exhibit A, slide 10). Among them, four entities are receiving state purchase program funding for the first time.

Recommendations for proposed funding were shared (refer to Exhibit A, slide 13). The recommendation shows the proposed funding by ODA, as well as the potential FRPP dollars that can be leveraged. With ODA's \$2.7 million, Local Sponsors have a potential of applying for \$8.1 million in FRPP dollars for landowners.

Roger Rhonemus asked Denise to confirm again how many counties will be represented in this funding round – 44 counties, representing half of the state's counties. Roger commented that other counties (especially in Southeast Ohio) may have felt uncompetitive under the centralized AEPP. Perhaps now they will see the opportunity to come into the program, and apply next time.

Howard and Denise confirmed that only two entities indicated in their applications that they would be seeking approval of a localized "Other" section on the landowner application. One is Black Swamp Conservancy which has proposed local questions

focused on conservation practices and farm stewardship. Tim Lynch commented that he can see the need for a localized section focusing on conservation planning in his area, as there is a big push for that in northwest Ohio due to the ag nutrient runoff issue.

Brian Williams noted that many organizations have indicated that they will apply for FRPP matching dollars, but it appears that two did not. Visitor Jonathan Ferbrache explained that Fairfield County marked “no” regarding FRPP because of issues with ODA’s Memorandum of Agreement (MOA) during the 2011 round of funding. He added that if language is revised in the MOA, they will reconsider applying for FRPP. However, they are also an active oil and gas county, and that also makes many of their farms ineligible for FRPP.

Denise asked Matt to clarify FRPP’s stance on oil and gas, and Matt explained that active oil and gas leases have to be subordinated, and it is near impossible to get an oil and gas company to subordinate their rights to the agricultural easement. Tim added that in northwest Ohio, many people signed oil and gas well leases in the past, but have been able to get out of those leases because they are not being utilized.

Dean LaRue asked if the projected funding amounts line up regionally with the proportion of applicants from those quadrants. Jody clarified that no, they didn’t match up because AMV and AFS were taken into account in the formula. Brian added he hopes the formula results in an evening out between the quadrants in the number of easements purchased. Jody said that in the 2011 AEPP funding round, 35 counties were represented; this application round stands to have 44 counties represented.

Brian mentioned that the strongest applications by score came from land trusts; he believes this underscores the importance of their role in farmland preservation. Denise also added that land trusts are strong because they can cover more counties.

Board Discussion and Recommendations

Brian thanked the OFP staff for the work done thus far; he visited the OFP a few weeks ago and knows that they were focusing on every detail. He was comfortable with the direction then, but is even more comfortable now.

MOTION: Brian Williams moved to recommend to the Director the scoring and dollar amounts as provided in the scoring summary document (Exhibit B to these minutes). Tim Lynch seconded; discussion related to Motion:

Jay Rausch asked if Union County was included in the funding, and Denise explained that they are not since their nonprofit status is not yet complete. They should consider applying next round.

Lucille Hastings commented that the launching of this funding round represents a huge amount of work, and wants to know that the process for scoring and funding is legal, done impeccably, without any glitch that causes question from the public. Howard explained that both the statute and rules were considered throughout every step of this

process, with revisions being made to the Ohio Administrative Code at the beginning of this year. Julie Phillips added that ODA Legal stayed involved throughout to ensure everything met the statute and new rules.

Tim commented that he believes the process has been done correctly, changing the OAC first as opposed to trying to alter the statute itself. Lucille appreciated that an agreement will be signed with the Local Sponsors once the awards become official. Joe Logan shared that he believes the new LAEPP shows a positive direction for the program, as the Board has discussed in the past having a program that meets the needs of farms of all sizes. These changes help to level the playing field. He thinks that over time, the Board should consider the demographics of the various regions of the state, and see how to address those areas where the farms are smaller. Howard added that the centralized AEPP was criticized for having a statewide one-size fits all approach, so the LAEPP is indeed moving the purchase program in a positive localized direction.

MOTION continued; to recommend to the Director the scoring and dollar amounts as provided in the scoring summary document (Exhibit B to these minutes). Vote 8-0; motion carried.

Legal Issues Update

Julie Phillips updated the Board as to the status of ODA's Memorandum of Agreement (MOA), which is a document being signed by ODA and Local Sponsors utilizing ODA's dollars to leverage FRPP dollars. Julie explained that the most concerning thing to entities signing the MOA was an indemnification clause. ODA Legal is working with FRPP to protect both the state's interest and at the same time provide Local Sponsors with this benefit. The revisions should be complete soon.

Denise shared that ODA Legal has also been assisting with an issue involving the Stratford Ecological Center donated easement. The Center's easement was the first donation in Central Ohio, and provides the public with opportunities to see how food is grown and to participate in the farming activities. A portion of the produce is donated to food banks. The east side of the Center borders State Route 23 and an intersection with State Route 315. The intersection has an odd angle and has been a problem for years. The Ohio Department of Transportation (ODOT) and the City of Delaware are planning improvements, and one of the several options being considered involves taking a small section of the property covered by the agricultural easement. However the impact of the taking would be large. ODA has entered into the discussion to advocate alternatives to this option, expressing their concerns to both ODOT and the city. Julie added that the property is already used for a public use, which helps ODA with our argument, as our statute considers agricultural easements to have a public purpose. Howard and Jay discussed a similar issue on the Arno Renner easement (Union County) a few years back, wherein ODA successfully argued for a reroute of a sewer line around a preserved farm. Tim added that what happens with the Stratford situation will be important, as pipelines (for instance) are coming much more to the forefront in the state, which in turn could result in increased participation in the agricultural easement programs. Brian commented that it is true the Stratford option that does go through the easement requires only a small

portion of the property, but could be a slippery slope. He is working with his organization (Mid-Ohio Regional Planning Commission) to weigh-in, as both transportation planning and farmland preservation are key aspects of their organization.

A break was provided at 11:30a.m. to eat lunch.

Meeting resumed at 11:47a.m. Howard asked Tecumseh Land Trust (TLT) to provide an update on the federal tax benefit. Krista Magaw of TLT explained that a landowner can deduct the donated portion of an agricultural easement (100% of Adjusted Gross Income for full time farmers, 50% for non-full time farmers) from their federal income taxes. This is an enhanced tax benefit that was approved retroactively for 2012 and through 2013. If not made permanent, the benefit will return to just 50% AGI for full time farmers, 30% for non-full time farmers). Krista commented that this is a big deal for landowners. Land Trust Alliance has been speaking to congressional members about the importance of this benefit for landowners, even those that do receive payment for the agricultural easement. Jay asked if the deduction (which can be taken over a period of years) continues if the landowner passes – the answer is no, nor does the benefit pass on to successive owners.

Update on NRCS programs

Matt Harbage, FRPP Program Manager at USDA-NRCS, provided the Board with an update on FRPP. Matt will be on detail in Washington, D.C. for 120 days. Matt introduced Danielle Balduff to the Board as his replacement during that time. Matt reported that the next deadlines to apply for FRPP are 4/30, 5/31, and 6/28. Matt can request additional funds if other states do not use their share of FRPP. It will be tight in aligning with the LAEPP timeline, as he will need a FRPP Cooperative Agreement (signed by NRCS, Local Sponsor, and ODA) by September. Howard, Matt, and Denise discussed asking Local Sponsors to consider shortening their landowner application periods due to this timeline, since the Advisory Board will need to meet to provide the Director with a recommendation on the approval of landowner applications. Requirements for FRPP applications were also discussed (such as the Option to Purchase).

Other Issues: Pipeline Construction Standards

Denise explained that the OFP has received many inquiries about pipelines due to the boom of shale oil and gas production. ODA has reached out to the Ohio Department of Natural Resources (ODNR) to align both oil and gas language and pipeline site restoration language in our agricultural easements with similar language/standards under consideration by ODNR for pipelines that cross ODNR lands. ODNR has drafted a set of standards (not yet finalized) for pipelines on ODNR lands, and ODA will pay close attention so that we can provide guidance to landowners on what should be in potential pipeline agreements as it relates to protecting the agricultural productivity of the property after installation (removal/replacement of top soil, for instance). Howard added that in general we would prefer no pipelines go through our agricultural easements. If the pipeline is to be routed through one of the properties, we want to minimize impact and

provide guidance on how to get companies to “put it back right” when completing installation. Tim commented that standards would be a good idea, as there are a lot of consequences to deal with for a farmer after a pipeline company has come through.

Public Comments

Larry Frimerman of Three Valley Conservation Trust shared that in addition to the oil and gas pipeline concerns, he has seen increased encroachment from other utilities. There is a proposed AT&T project coming along US Route 40, from Indianapolis to Dayton, and possibly further east, with the potential to have an impact on many agricultural easements.

Krista commented on a Columbia Gas issue they are dealing with on an FRPP easement. Krista mentioned continued efforts to educate Ohio legislators about the Clean Ohio Fund. Several amendments were introduced to put bonds into the biennial budget bill. She expressed the importance of keeping awareness high and looking at a future ballot initiative. She added that the various organizations within Clean Ohio (farmland, open space) may want to consider new opportunities for working together. For instance, open space has been unable to utilize all of their funds in some areas.

Jonathan commented on the impact of the pipeline easements. He mentioned that production never quite returns to what it was, with compaction of the soil being the biggest challenge. He wanted to share that the landowners of one of the pending AEPP 2011 easements received a Conservation Farm Family Award, and another AEPP landowner recently received a Livestock Coalition award. He added that he and other Local Sponsors talk often about spreading FRPP dollars out effectively, and that they work hard to find ways to work with oil and gas companies. He hopes to continue work with ODA and FRPP.

Howard asked Jonathan to clarify an agreement he mentioned that Fairfield County worked on with regard to pipelines – Jonathan called it an agricultural mitigation agreement. They discussed who would enforce these kinds of agreements, standards. Jonathan added that a local viewpoint is important.

Final Comments

Howard thanked everyone for coming, and a possible meeting in July was discussed. The OFP staff will send an email with potential dates soon.

MOTION: Lucille Hastings moved to adjourn the Board meeting at 12:33p.m. Roger Rhonemus seconded; Vote 8-0; motion carried.