

## ***Ohio Agricultural Easement Purchase Program: From Pilot to Further Progress***

This concept paper is designed to outline the possibilities originally envisioned by the subcommittee<sup>1</sup> of the Ohio Department of Agriculture's (ODA) Office of Farmland Preservation (OFP) advisory board, and approved by the entire ODA OFP advisory board on August 20, 2008, to move the Agricultural Easement Purchase Program (AEPP)<sup>2</sup> from a pilot to a permanent fixture on the Ohio agricultural landscape.

We begin by offering principles to guide us through the development of a next generation agricultural easement purchase program. Then we outline a reformulated agricultural easement purchase program for consideration by the Ohio Department of Agriculture's (ODA) Office of Farmland Preservation (OFP) advisory board. We discuss the basic elements of the program areas. Finally, we addressed funding and other unresolved issues.

### ***I. Guiding Principles***

“Guiding Principles” outline the purpose of the proposed program. The program will be designed using the following principles as a framework. The guiding principles are that the next generation of the Ohio agricultural easement purchase program:

- Confirms the value of Ohio agriculture to local citizen consumers,
- Upholds the historical value of agricultural land as the basis for our society,
- Is locally-relevant,
- Increases local commitment,
- Assists with capacity building of local programs,
- Addresses the diversity of Ohio agriculture,
- Is voluntary,
- Is farmer-friendly,
- Is a well-funded program from a stable source(s),
- Strengthens agricultural economic development efforts,
- Strives to preserve locally important farmland and products,
- Encourages preservation of agricultural resources, including soil and water,
- Promotes sustainable communities,
- Utilizes other opportunities to attract other farmland preservation program dollars when available and appropriate,
- Promotes public/private relationships, and
- Promotes farmland protection as part of broader planning process.

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<sup>1</sup> Jill Clark, vice chair and subcommittee chair, ODA OFP advisory board, and Doug Givens, Lucille Hastings, and Brian Williams, members and subcommittee members, ODA OFP advisory board

<sup>2</sup> This proposal is for the *state* level AEPP program. The outline proposed here does not in any way affect the ability of local governments, land trusts and Soil and Water Conservation Districts from legally exercising their right to conduct their own programs.

## ***II. Program Outline***

Recognizing that a fully proposed program would involve a legal review in addition to stakeholder input, we offer an *outline*. This outline is a recommended program design that follows the above principles and the overall program goal of moving the *pilot* Agricultural Easement Purchase Program to a *permanent* agricultural easement purchase program that reflects the needs of Ohio farmers, the communities within which they operate, and the State of Ohio.

**Overall Program Approach.** To accomplish the guiding principles, the reformulated program will take a two-prong approach – with two distinct program areas. Foremost, the program will focus on creating a program area that shifts the administration and management of purchasing easements to the local level. This achieves many of the guiding principles, not the least of which is increasing the local commitment and building capacity of local programs. Most importantly, this shift addresses local priorities for farmland protection, making an agricultural easement purchase program more locally relevant. The majority of funds for state purchasing agricultural easements are focused on this program area, Program Areas #1. At the same time, it is recognized that state funds should be available for state-level priorities and/or to encourage the development of local programs in areas where none exist. For these reasons a second program area is added. This program area, described below in Program Area #2, will be more flexible in its program goals, adjusting to the needs of the state and perceived needs of struggling communities. This second program area will entail a much lesser amount of funds and will not adhere to the annual rounds that the first program area will be run on.

## ***III. Two Prongs of the Program***

### ***Program Area #1 – Ohio Agricultural Easement Partnership Program***

**Program area design:** This program is a partnership between the ODA and eligible local (including regional) programs. The State provides a framework within which counties, townships and nonprofits participate, matching funds for easements and limited enforcement support for those easements. Participating counties manage their own program, and manage all aspects of the program, such as the farm selection, easement negotiation, payment, and monitoring. Participating local programs are required to provide annual reports to the state. The state requires local programs to meet minimum program standards to be eligible to receive state funds and to have the state provide enforcement support. Program area #1 focuses on allowing local programs to determine local priorities and then partner with the state to achieve those program priorities.

Also, this program area recognizes that there are many local partners that currently support successful local acquisition and monitoring of easements. These partners include land trusts, soil and water conservation districts, planning commissions, and the like. This program area would encourage cross-government (county and township, for example) and private/public partnerships to develop a full capacity.

Again, the *majority* of state funds for agricultural easement purchases will be directed towards Program Area #1.

**Administration:** The program is administered at two levels. The state administers state funds, keeps an updated easement valuation point system, is responsible for certifying eligible local programs and doing an annual recertification of existing programs, and tracks easements purchased with state funds. Furthermore, the state co-holds the easement and participates in easement negotiation and enforcement (for an alternative, see Box 1). The rest of the program administration is done by the local administrative authority.

**Eligibility:** Approved local agricultural easement purchase programs are eligible to apply for funds in Program Area #1. Eligibility is recommended by the ODA OFP advisory board and determined by the Director of ODA. Eligibility is determined by using the following criteria, but not limited to these criteria. A “local” program can be administered by a county, township, municipality, a non-profit organization with a mission for land protection (ex. land trust or Resource Conservation and Development Council), or a partnership between any of these entities (an example would be a regional partnership). If the administration is conducted solely by a non-profit organization, this organization must receive the support of the local governments that represent the areas this organization intends to conduct the agricultural easement purchase program. This support is in the form of a resolution passed by the governing body.

The local agricultural easement purchase program shall have:

1. A permanent and active farmland protection advisory board with diverse representation,
2. A designated program leader that has this program as part of his/her job duties,
3. Clear program goals and objectives,
4. Farm selection criteria that is designed to achieve the aforementioned program goals and objectives,
5. Standards for landowner eligibility, including CAUV and agricultural district participation,
6. A policy and method to accept agricultural easement donations,
7. A policy for working with other levels of local government and government agencies (such as townships, soil and water conservation districts) and non profits organizations (such as land trusts),
8. A recently updated comprehensive plan inclusive of a land use component emphasizing agriculture as well as all roadways and utility service plans.
9. Established stewardship and monitory standards,
10. Evidence that the local entity(ies) has the fiduciary capacity to support a local easement purchase program, including monitoring and general enforcement,
11. And, if applicable (see Box 1), a model easement that utilizes the state’s minimum standards (to be established) and provide policies for issues including, but not limited to, additional house building, secondary conservation purposes, oil and gas, and wind turbines.

### ***Box 1 - Additional Options for Easements***

Regarding easements (the context, the holder, and the enforcement), ODA could decide to shift the writing, the holding and some of the enforcement to the local program, read below. Or, ODA could *offer an option* to the local certified program to either co-hold a state-written easement with ODA, or choose write, hold and enforce their own local easement, thereby creating more flexibility.

[If ODA chooses to continue to co-hold easements with the local program, then the easements would continue to use the state template. In this case, the OFP Advisory Board recommends building in more flexibility in negotiating terms and issues as migrant labor housing and secondary conservation.]

**Additional Option - Easement Content:** The state will provide a framework, which will include required provisions and suggested provisions of the easement. The local program will draft a model easement from this framework. The local program is able to include additional provision or provisions that have flexibility (options for the landowner), with the approval of ODA. This approval can occur when the program is deemed eligible or at the annual recertification.

**Additional Option - Easement Enforcement and the Agricultural Easement Purchase Program Defense Fund:** If this option offered in Box 1 is exercised, the local program will provide first line of defense of easement enforcement. The State of Ohio will not co-hold the easement, will not provide any stewardship or monitoring (but will track this), but will provide a mechanism for easement enforcement in special cases. Because of the ODA's interest in the program creation and funding of easements, an agricultural easement legal defense fund will be created to provide support for enforcement in the event that a local program is unsuccessful in prosecuting an easement violation. This defense fund will function like an insurance fund and will be a measure of last resort for a local program. The agricultural easement defense fund will protect the public interest in funds expended on agricultural easements. The ability to utilize these funds will follow guidelines set by ODA. This fund is built from fees collected from the state and from the local program when an easement is recorded. If the funds reach a certain threshold set out by ODA, interest may be used for Program Areas #1 of the Ohio Agricultural Easement Purchase Program.

**Program procedures:** After being determined eligible, a program would apply to a round of funding offered by ODA. The eligible program would apply by demonstrating that they have both landowners that want to participate and the required cash match. Some potential sources for a local match (which can be a combination of various private and public local sources) are located in Section IV. With the advisement of the ODA OFP advisory board, the Director of ODA will make the selection of both the programs that will receive matching funds and the amount of those funds. The goal would be to provide all eligible programs with funds. Two options for fund distribution to eligible programs include either distributing funds according to the amount requested (meaning that program A would receive the proportion of total funds that match program A's proportion of all requests), providing more funds to programs that offer a

greater local cash match, or providing more funds to counties that develop solid public/private partnerships with land trusts.

**Funding/match:** The burden of the monetary match for the state’s agricultural easement purchase program will not be solely on the participating farm family. While there will be a continued opportunity for farmers to donate a portion of the easement value, Program Area #1 will focus on establishing a minimum local program monetary match that increases over each round as this program area matures and that the transition time is appropriate to enable local programs to secure funds. It is *suggested* that the local program provide a 15% cash match during the first round that Program Area #1 is offered, with the farmer able to donate up to 60% (which is the current maximum landowner donation). However, it is suggested that over the course of *several* rounds (years) of this program area, this required local cash match will be raised to 30%. Of course, local programs can always provide a higher match. See Section IV for suggestions on local funding sources.

**Stewardship/monitoring:** The applicant to the program (in this case, an approved local agricultural easement purchase program) will be the holder of the easement and will provide on-the-ground stewardship and will conduct all monitoring. The applicant may request a stewardship and monitoring fee from landowners or seek other sources to fund this activity. The applicant can co-hold with a local partner such as a Soil and Water Conservation District (SWCD), non-profit land trust, and/or township. The applicant can work and contract with other local entities that have stewardship experience, such as land trusts and SWCDs.

**Easement Valuation:** Because state funds are utilized, the state’s points-based appraisal system is used to determine easement value.

### *Program Area #2 – Ohio Priority Agricultural Easement Purchase Program*

**Program design:** It is anticipated that there are times when state-level coordination is needed to address state priorities for farmland protection, and/or to ensure the protection of a keystone farm, and/or to enable fledgling counties develop programs, and/or to assist critical farms in areas of the state without active local programs. Therefore, Program Area #2 is offered. This program area is intentionally flexible to address various program goals.

As mentioned earlier, this second program area will entail a much lesser amount of funds and will not adhere to the annual rounds on which Program Area #1 will be run. Program Area #2 will be made available as the Director of ODA deems appropriate (as advised by the ODA OFP advisory board). Finally, this program area is directly under the discretion of the Director of ODA, with the recommendations by the ODA OFP advisory board.

**Program goals:** The program goals will be driven by state-level priorities. It is recommended by the ODA OFP advisory board that these priorities be in accordance with a state-level farmland protection plan.

The following are *examples of* goals for this program area:

1. Address state priority lands (ex. specific bioregions or microclimates, specific commodities of statewide importance, urban agriculture),
2. Protect historic properties (ex. Ohio bicentennial farms),
3. Partner with successful land trusts, and
4. Enable local governments to participate that need more capacity building.

**Program administration:** Unlike Program Area #1, Program Area #2 is primarily administered by ODA OFP. This program area does not necessitate a partner with ODA in purchasing agricultural easements. The ODA OFP establishes the program goal, program procedures, the eligibility criteria, the easement content and the easement stewardship, monitoring and enforcement arrangements.

**Eligibility:** Eligibility will be determined by ODA and will depend on the program goal of the round.

**Selection criteria:** The selection criteria are state driven and will be determined as program funds are made available and as program goals are established. The ODA OFP advisory board will make recommendations to the ODA OFP as well as to the Director of ODA.

**Easement Content:** Easements in this program area where state-level coordination is needed will adhere to ODAs current standard easement.

**Stewardship/monitoring/enforcement:** Stewardship, monitoring and enforcement of easements will also depend on whether these easements are solely held by ODA, if there is a co-holder, or if the local partner is the sole holder.

**Funding/match:** Easement funding match is determined by ODA on a round-by-round basis.

**Easement Valuation:** Because state funds are utilized, the state's points-based appraisal system is used to determine easement value.

#### ***IV. Funding and Other Issues***

**State Funding:** To have a successful future for the Agricultural Easement Purchase Program, with both prongs (Program Areas #1 and #2) running effectively, AEPP needs to have adequate and stable funding. The amount of unmet need in the pilot AEPP program is approximated at 185 million dollars. Between 2002 and 2007, ODA received 1,603 applications to AEPP. Of those, 117 were funded, leaving 1,486 unfunded. Reviewing records from 2003 to 2007, it appears that approximately 35% of the applications are duplicate properties from a previous year. This translates into an estimated 925 unfunded. At an average of 200 acres per application, that translates to 185,000 acres of unfunded applications. The average cost per acre for the state has been approximately \$1,000.

Adequate funding could likely come from multiple sources, foremost the renewal of the Clean Ohio Fund. A full analysis of funding options, from both a legal and fiscal standpoint, needs to be conducted.

**Potential Sources for Local Program Match:** The local cash match can come from several potential sources. See the following policy brief, “Local Funding Options for Ohio Farmland Protection,” for more information: <http://cffpi.osu.edu/docs/FundingOptions.pdf>. Some of these potential sources include local bonds, sales tax (and *voluntary* sales tax), general fund appropriations, community foundations, estate taxes, property taxes, private contributions, land trusts, transfer tax, lodging tax, agreements (New Community Authorities, Joint Economic Development Districts, Cooperative Economic Development Agreements) and Tax Increment Financing. Finally, the number of years of recoupment under Current Agricultural Use Valuation could be extended. These extra funds could be utilized by county government for a match and is described in more detail below.

The Current Agricultural Use Valuation (CAUV) program could be increased to provide additional revenue targeted at supporting local agricultural easement purchase programs. The CAUV program permits differential property tax assessment for working lands. When farms withdraw from CAUV, they are subject to a recoupment fee equal to previous three years’ tax savings. Using recouped CAUV funds for a local match provides the nexus between non-farm development and agricultural land protection that is reasonable grounds for use of those funds. A 2003 study by the Ohio AFT office demonstrated that increasing the period from three to five years would raise an additional \$4.7 to \$7.0 million per year. Increasing the period from three to seven years would raise an additional \$9.4 to \$14.0 million.<sup>3</sup> Also, there is currently no penalty besides recoupment for CAUV recipients who are found to be ineligible. Creating an ineligibility fee could serve as a revenue source for farmland preservation while discouraging land speculation.

Finally, the use of Installment Purchase Agreements (like those used in Pennsylvania and Maryland) could “stretch” dollars, thereby protecting more farmland. Dollars are stretched because Installment Purchase Agreements (IPAs) “spread out payments so that landowners receive semi-annual, tax-exempt interest over a term of years (typically 20 to 30). The principal is due at the end of the contract term<sup>4</sup>.”

**Federal Funds:** This outline does not address how the use of federal funds in the AEPP will affect program design. The ODA OFP advisory committee agrees that the FRPP has been a critical component of farmland preservation on the Ohio landscape. However, we also understand how this program has changed from year to year. We consider it problematic to design the state program around the federal program given the major changes in the federal program from year to year. Instead, we recommend that the state reassess their program when the federal request for proposals comes out to determine if we can participate. If so, all efforts should be made to participate. There is also the possibility of maintaining some flexibility in the state program to allow for both the state and local partners to participate.

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<sup>3</sup> Calculated from the 2003 reported CAUV recoupment dollars to the Ohio Department of taxation. Additional recoupment from a five-year period equals \$4,717,275 based on actual 2003 recoupment reported by 59 counties. Additional recoupment equals \$7,035,937 when adjusted for all 88 counties. Similarly, for a seven-year period, \$9,434,481 equals the additional recoupment based on actual 2003 data from 59 counties; \$14,071,451 equals additional recoupment adjusted for all 88 counties.

<sup>4</sup> American Farmland Trust: <http://www.farmlandinfo.org/documents/27752/tafs-ipa.pdf>