

**2014 Clean Ohio Local Agricultural Easement Purchase Program (LAEPP)
Technical Meeting Notes**

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

September 5, 2014

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: Liz Woedl, Megan Chapman, Dan Jackson, Jonathan Ferbrache, Pat Deering, Bill Roshak, Krista Magaw, Michele Burns, Patrick Hornschemeier, Mike Powell, Chris Szell, Julia Cumming, Richard Stallard, Ray Heithaus, Jill Shriver, Lisa Schott, Larry Frimerman, Jeff Thomas, Laura Curliss, Bill Mason, Cathy Jerbic, Steve Goodwin, Chris Rogers, Emily Heppner, Wendy Bitell, Bob Stoll, Karen Richards and Matt Harbage.

ODA Staff Members: Howard Wise, Assistant Director; John Schlichter, Deputy Director; Julie Phillips, Assistant Chief Legal Counsel; Denise Franz King, Executive Director; Jody Bowen, Amanda Bennett, and Jake Parkinson.

ODA Deputy Director John Schlichter opened the meeting by welcoming everyone and doing introductions. He expressed gratitude for local partners' patience with both state and federal programmatic changes. ODA looks forward to today's input.

2015 LAEPP Local Sponsor Certification Application

Denise Franz King, Executive Director of the Office of Farmland Preservation, then shared with the Technical Committee the 2015 Local Sponsor Certification Application. The application is already available on the LAEPP 2015 Local Sponsor Materials web page. The only edit made was to remove the question asking if the Local Sponsor is conducting a 30, 60, or 90 day application.

Denise called attention to Section G of the application (Service Area Statistics), noting that some of that data and the maps utilized for these sections has come from the Ag Census. Due to changes in budget and staff, some of this data is not being updated as often. If any of the Local Sponsors come across more up-to-date data regarding farm values or size, please share with ODA for future Local Sponsor Certification Applications.

The Technical Committee was asked to share their experiences as a mentor or mentee in previous funding rounds, for the benefit of organizations seeking to apply for the first time under LAEPP 2015 or for those Local Sponsors possibly seeking to serve as a mentor. Krista Magaw of Tecumseh Land Trust said they have served as a mentor and that means providing different resources for different entities. Bill Roshak said that West Central Ohio Land Conservancy has met with Krista a few times for different things, and that was reiterated by Bob Stoll of Logan County Land Trust, who said that as a single-county land trust they found Tecumseh Land Trust to be very helpful in navigating the state and federal programs. Karen Richards shared that Champaign Soil and Water Conservation District (SWCD) found Krista's assistance invaluable as a mentor, specifically in navigating the Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE) application process. Krista added that Rob Krain (Black Swamp Conservancy) and Larry Frimerman are also invaluable resources for Local Sponsors, especially

when it comes to finding additional funding sources beyond the state and federal agricultural easement programs.

Denise recommended that any organizations seeking one-on-one consultation regarding the Local Sponsor Certification Application visit with ODA staff after the meeting or contact the office with any questions. ODA also does its best to attend landowner meetings or organizations' annual meetings when requested.

The new Office of Farmland Preservation's GIS map was shared with the group, which shows the locations of ODA's agricultural easements throughout the state. There is a version with the easement's name and year, as well as a less-detailed version simply showing location. If you would like to use the map, let ODA know. Denise also asked that Local Sponsors consider sending their GIS information if they have it, as it would be nice when working with pipeline companies, for example, to show all preserved property throughout the state, not just those held or co-held by ODA.

Denise then discussed with the Technical Committee what ODA has been learning about pipeline proliferation throughout the state. Maps detailing pipelines are not as easy to come by since 9/11/01. When a pipeline situation arises, ODA needs to pull that particular easement to review that agricultural easement's rights and responsibilities regarding signing easements or rights-of-way for pipelines. There are various areas of a Deed to consider – utilities, structures, etc. ODA has only purchased the development rights; we try to work with the pipeline company, to either re-route around agricultural easements (when possible), or to revise the language of the landowner's right-of-way and/or easement to include language important to preserving the productivity of the land. That's where the Ohio Department of Natural Resources' Pipeline Standard and Construction Specifications come into play. This document explains what needs to happen before, during, and after pipeline construction. ODA is advocating for the inclusion of this document as an Exhibit to any pipeline easement or right-of-way on protected property. Denise recommends that if approached by a landowner who in turn has been approached by a pipeline company with a potential pipeline easement or right-of-way, that the Local Sponsor advise the landowner to not sign right away, but to review any potential agreement with their attorney.

Denise then took a moment to introduce ODA Assistant Director Howard Wise, the "father" of the Ohio Department of Agriculture's Office of Farmland Preservation. Howard shared he was happy to see the Technical Meeting so well attended.

LAEPP Landowner Application

Amanda Bennett began the review of the LAEPP 2014 landowner application with a summary. She stated that 114 applications were submitted electronically, with 83 hardcopies being received by the Office of Farmland Preservation for review and approval for funding. Pending easements include one new county – Allen – for the LAEPP.

Amanda then began walking through the online application and comments from the Technical Committee are as follows:

Steps 5-6 (Ownership and Title Holder(s))

A member of the Technical Committee asked that more entry fields be added to this part of the application.

Step 3 (Eligibility)

A Technical Committee member asked for more definition of what constitutes “nonagricultural commercial activities.” Denise responded that a good indicator would be if the activity takes the property out of Current Agricultural Use Valuation (CAUV), as CAUV is a requirement of the LAEPP.

Step 9 (Farmland Usage)

A question was asked about what detail is required for this section. Amanda explained that LAEPP 2015 will feature more specific information required in Step 9, to be introduced later in the agenda.

Step 14 (Other Factors, standard application)

Amanda asked the Technical Committee to share their thoughts on question 14E (Repeat Applications), and the part of the question that asks if the landowner declined a full offer in the last funding round. Clarification was sought on whether this pertained to offers made to landowners with electronic-only or hardcopy applications. A comment made was that it should apply only to hardcopy applications, as only hardcopy applications can receive an award. Another member felt it should be worded differently in the next landowner application, making it clear that what constitutes a “full” offer and if that offer is ODA-only funding, or an offer made of multiple funding sources.

Another Committee member recommended deducting points for landowner applicants that declined an offer, as it constitutes wasting the Local Sponsor’s time and resources. There was disagreement on penalizing landowners when there are many factors to a landowner withdrawing from the application process. Denise shared that a landowner should not be penalized when the circumstances leading to the decline of an offer is not the landowner’s fault.

A point was made regarding that perhaps the screening of potentially-bad applicants could be achieved if Local Sponsors can charge for their services to the landowner. Another member disagreed, stating that being charged doesn’t always keep landowners from withdrawing. It would be more beneficial for the Local Sponsor to have more discretion to decline to work with landowners when appropriate.

Step 15 (Local Government’s Comprehensive Planning)

The Technical Committee engaged in conversation about what is an appropriate time for Comprehensive Plans to be updated. A recommendation was made that ODA allow a resolution of support from the local jurisdiction indicating that the existing Comprehensive Plan is still being utilized, to indicate ongoing commitment. Some Local Sponsors indicated that some counties in their service area(s) have not updated plans in some time, and do not have the resources to do so anytime soon.

One member explained that question 15C (zoning type allows no more than one house per “x” acres) was no longer relevant in one of her counties. Other members did not share similar experiences.

Step 17 (Conservation Plans)

The Technical Committee engaged in conversation about Conservation Plan requirements. Matt Harbage of USDA-NRCS explained that local NRCS offices cannot easily develop plans on properties that do not directly involve an NRCS program. Denise explained that the purpose of this section of the application is to “weed out” the bad actors, and incentivize participation by conservation-minded landowners.

Attachments

A recommendation was made that acreage is best calculated by the deeds of ownership and not by Auditor’s Records, as required and used in ODA’s application.

Amanda then shared what can be expected at this time from the LAEPP 2015 landowner application:

- Large Farm Exception: ODA has decided to keep the Large Farm Exception, but only in the case of requested pre-splits (submitting only part of a large farm under an application). ODA will continue to honor those post-split Large Farm Exceptions that have been granted in previous years. A question was raised if a pre-split requiring changes in ownership or a survey would constitute a penalty in Question 14F (Recent Land Use Conversion). Clarification was made that a split to divide the farm, provided all pieces are still in agriculture, would not result in a penalty on the landowner application.
- Step 9 (Farmland Usage) will undergo a makeover in LAEPP 2015. To ensure that applicant properties are primarily in agriculture, ODA feels it is best to expand this section to capture the needed data – most likely acres in woods, crops, etc. When the new Step 9 is ready, ODA will share prior to landowner application entry period.
- Localized Step 14 instructions (and an example) were made available for the Technical Committee. For LAEPP 2015, localized Step 14s will need to be to ODA for review no later than December 31, 2014.
- Resolutions – Amanda shared that new templates for county and township resolutions of support would be made available on the LAEPP 2015 Local Sponsors materials web page soon.
- Outreach to landowners – Amanda explained that a site visit form is being developed to be utilized as an attachment to the landowner application. ODA has found that there have been some farms that end up withdrawing or being disqualified when the issues surrounding those drops could have been identified during a pre-application site visit. The form will be short and be made available on the resources page after it is developed. Amanda then asked for Technical Committee comments regarding outreach.

A suggestion was made that ODA better-define subdivision for landowners, as it does not always mean the same thing to them as to Local Sponsors or to ODA. One Local Sponsor shared that they have created a fact sheet for landowners listing all of things a landowner can/can’t do when they sign a Deed of Agricultural Easement.

One member asked that ODA make Licking SWCD’s prescreening form available online for use by other Local Sponsors. Another member asked that ODA make it clearer when forms/templates online have been updated.

Denise then shared the tentative timeline for the 2015 LAEPP funding round, and potential award amounts for Local Sponsors. A Technical Committee member asked that if possible, ODA consider making the Certified Local Sponsor training in December be made available via webinar.

Next Steps for 2013 LAEPP Local Sponsors

Amanda reminded Local Sponsors to utilize the Process Steps document on the LAEPP 2013 Local Sponsors resources page. As is common, farms are at different points in the process at this time, with a few about to go to closing.

Amanda reminded Local Sponsors that Purchase Agreements (required for ODA Controlling Board process) can be sent when a majority of title-related issues have been completed (state and federal farms) and NRCS appraisals have been approved (federal farms).

Amanda and Jody shared transparent sheets that can be utilized to help Local Sponsors meet Ohio's recording requirements for margins. This can be especially helpful when creating documents such as the Present Condition Report.

Jody updated the Technical Committee on the Assignment of Payment Process, which helps address land trust concerns about funds passing through their organizations to the title/escrow agent. Jody will be speaking to local sponsors about this process specifically as they approach closing on easements.

Amanda explained that under LAEPP, escrow packages will be created by the Local Sponsor, and that it may be helpful to combine both federal and state closing instructions into their instructions for their title/escrow agents.

Next Steps for 2014 LAEPP Local Sponsors

Amanda reminded Local Sponsors to utilize the Process Steps document on the LAEPP 2014 Local Sponsors resources page. Most Local Sponsors are at the step requiring title work to be ordered and sent to ODA for review. As for Local Sponsors with federal ACEP-ALE farms, when is it appropriate to order an appraisal? Amanda shares that there is never a perfect time, but probably best to wait until title work has been reviewed and the landowner fully understands the restrictions that will be contained in the Deed of Ag Easement (subdivision, housing, etc.).

Federal Agricultural Land Easement Program – Next Steps

Matt Harbage of the Natural Resources Conservation Service (NRCS) shared a presentation on the current status of ACEP-ALE. Matt explained that ACEP-ALE is operating under existing regulations for FY2014, but the processes for projects under FY2014 may be different for any future projects beginning in FY2015 when ACEP-ALE regulations are completed. The current regulations are available online. Matt explained what was known about Ohio's allocation for ACEP-ALE under FY2014 and what can be expected at this time for FY2015.

Regarding those farms selected under ACEP-ALE FY2014, Cooperative Agreements are currently being developed and need turned around quickly. Ohio has a unique situation regarding indemnification that is being worked out at this time. Once that language is set, Cooperative Agreements will go out to the Cooperating Entity.

After the Cooperative Agreement is signed, title work and an appraisal will need to be ordered. ODA will complete the Agricultural Easement template with NRCS, as it must include the terms that are known as

“Exhibit 7” in the NRCS Cooperative Agreement. Title work should come in the form of a title commitment, not certificate or title opinion. The title commitment should reflect the ownership of the landowner, usually “fee simple.” It will be the title policy purchased by Local Sponsor and/or ODA that reflects an “Easement Interest” owned by ODA and/or the Local Sponsor. This has been a point of confusion lately with some title agents.

Appraisals can be USPAP or Yellow Book (USPAP preferable), and the appraisal’s effective date must be within 12 months of the closing date (plan accordingly). Be sure to furnish the appraiser with ACEP-ALE’s standards and specifications. A question was asked as to whether the baseline documentation (Present Condition Report) must be complete at this time, and Matt said no, just send what you have available to the appraiser, as the appraiser relies more heavily on the title work for completing the appraisal.

The best guess for FY2015 funding is to expect it to be about the same as FY2014 (between \$2.5 and 3 million). Matt suggests submitting the Local Sponsor’s best farms, not those with lots of title issues. The ranking sheet will be revised for FY2015, so farms in “deferred” status at this time may not rank the same during the next application period, expected at this time to be 12/31/14, 3/31/15, and 6/30/15. He will not have a funding round before 12/31/14’s deadline. This is the earliest he can expect to have an application period.

Matt also shared that there will still be a waiver process, although the decision to grant the waiver will be made nationally in FY2015 (it was decided locally this year). The waiver requires the local partner to bring to the table only 25% of what NRCS will contribute. The ideal waiver candidates are farms in a Metropolitan or Micropolitan Statistical Area (MSA), or those with active educational components taking place on the farm, for example. About half of the recipients of the FY2014 funding round were granted waivers.