FREQUENTLY ASKED QUESTIONS – FPIG Request For Proposals, 2008-2009

The following questions have been previously submitted to the Department regarding a prior Request For Proposals (RFP) for the Farmland Protection Implementation Grants (FPIG) program.

Each question is answered below.

1. **Q:** What is a "farm" in the context of this Request For Proposals (RFP)?

   A: For this RFP, "farm" is equivalent to the meaning of "farm operation" as defined in Agriculture and Markets Law Article 25-AA § 301(11): "'Farm operation' means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a 'commercial horse boarding operation' as defined in subdivision thirteen of this section and 'timber processing' as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other."

2. **Q:** If a farm consists of two different property owners (e.g., two unrelated neighbors) under the management of the owner of one of the two parcels (who then leases the other parcel from the second owner) and under the same business name, is this scenario considered one farm?

   A: Since the two parcels are operated together as one farm operation, this would be considered one farm. However, because each parcel is separately owned, this scenario may result in two distinct conservation easements for this single farm.

3. **Q:** Three adjacent property owners would like the county to submit an application for a Purchase of Development Rights (PDR) project. One property is owned by a farmer and is sandwiched between the other two properties. The farmer rents fields from neighbor "A." Neighbor "B" currently rents to a different more distant farmer, but wants to sell her property to the adjacent farmer once a PDR conservation easement has been placed on the property. These three properties constitute how many farms?

   A: Based on this scenario and in reviewing questions #1-2 of the Frequently Asked Questions for this RFP, the three properties constitute two different farms (the property owned by the farmer and the property he rents from neighbor "A" would constitute one "farm;" the property owned by neighbor "B," which is rented to the more distant farmer, would constitute the second "farm"). The fact that neighbor "B" desires to sell to the neighboring farmer does not presently link her parcel to either of the other two properties.

4. **Q:** Regarding the farmer and neighbor "B" as described in question #3 – If the farmer has a contract to buy neighbor "B"'s property when the application is submitted, would their respective properties then be considered one farm?

A: No, unless the farmer was also renting neighbor "B"'s property at the time of application.

5. **Q:** Does the one farm per proposal apply only to those applications requesting funding to purchase agricultural conservation easements?

   A: Yes.

6. **Q:** Our local government must rely on outside easement expertise to complete our proposed project. Our land trust partner has no staff and will therefore find a contractor to actually complete the necessary work. May we change to a different contractor than that named in our application if our initial contractor is no longer available to do the necessary work by the time the FPIG contract is awarded?

   A: Yes, but if you do not have a commitment from an individual at the time of application, the Department recommends that you do the following:
   - List more than one possible contractor who will complete the required work and preferably all possible contractors whom you are considering (each of whom are willing/able to do the required work during the anticipated contract period)
   - For each possible contractor, be sure to provide all of the requested information: name, title, affiliation, and a brief summary of relevant easement experience. Failure to do so would result in an incomplete application and it would therefore not be considered for funding.

7. **Q: (a)** How should in-kind transactional costs (e.g., staff time) be documented and retained on file by the applicant?
   (b) How should other transactional costs (e.g., materials) be documented and retained on file by the applicant?

   A: (a) To document staff time, the Department recommends that you use the official timesheet for each key personnel, or an accounting ledger (or equivalent spreadsheet) of each project partner (except the landowner) providing in-kind staff assistance that lists hours and hourly rates for each person listed.
   (b) To document other administrative costs (other than in-kind), the Department recommends that you rely on invoices/receipts for each administrative cost item.

8. **Q:** Property 1 is a farm whose owner is seeking a Purchase of Development Rights (PDR) transaction. Property 2 (another farm) is adjacent to Property 1, and its owner *might* agree to donate development rights as part of the match for Property 1. The owner of Property 1 rents and farms Property 2. If the development rights for Property 2 are donated as the local match for these two farm projects, should Property 1 and Property 2 be listed as one farm in the application? Would you like separate Component Budgets for Property 1 and Property 2?

A: Even though Property 2 will provide all of the required local match for the entire proposal (i.e., Property 2 will serve as the "match property"), both properties comprise one farm operation (or "farm"). However, each property must have its own component budget (either Form B.2 or Form B.3, depending upon its respective value of development rights).

9. Q: Can labor provided / donated by volunteers be counted as 'in-kind' towards the required local match?

A: Yes. If volunteers of any of the project partner organizations (except the landowner) are conducting tasks associated with any of the required documents comprising the project file for a proposed farm project, then their time can be counted as "in-kind" toward the local match requirement. However, please note that all costs, whether direct or in-kind expenses, associated with each farmland protection implementation project must occur during the contract period (i.e., those occurring after the date of the FPIG award announcement and no later than the last day of the contract period) to be considered eligible as either local match or as a reimbursable expense. Please refer to the answer to question #4(a) for the specific documentation necessary.

10. Q: The subject farm has a flawed soils map; the available NRCS soils data do not appear to be ground checked. For example, the soils map indicates that prime soils are located in an area that is a wooded steep incline. Given the topography of this portion of the farm, we intend to exclude it from the proposed easement area. However, we don't want our application to be negatively impacted by what looks like an exclusion of prime soils when we know it is actually a steep wooded hillside. Since we do not have the resources to prepare a ground-truthed soils map for the farm, what would be the best way to make this clear in our application (e.g., comparison with the aerial and topo maps and a note)?

A: If the published soil survey indicates that the area in question is prime soil and you intend to exclude that area because you believe the soil survey is inaccurate because the area in question is a steep wooded hillside, then be sure to provide an explanation along with supporting documentation such as aerial photograph and topographic map that clearly illustrate the soil map unit is located on a steep slope. However, before deciding to exclude the area in question, be sure to evaluate whether the area in question might serve as an important buffer between the productive land to be placed under a conservation easement and the adjoining land owned by others that may undergo non-farm development in the future. If there is not sufficient buffer between such incompatible land uses (and/or the adjoining property is not similarly protected with a perpetual conservation easement), the farm proposed for protection may not remain viable agricultural land.

11. Q: Farmer with an active greenhouse operation desires to sell his development rights. However, the farmer acknowledges that the topsoil has been removed from the site. Would the prior removal of the property's topsoil disqualify this farm from

funding consideration? Or, would this characteristic effectively lower the scoring of a proposal containing this farm to such an extent that it would not be prudent to submit it for funding consideration?

A: Lack of topsoil would not disqualify the farm from funding consideration. However, this characteristic would likely result in the subject farm receiving a low score on question #2(a) of the technical rating form.

12. Q: If a farmer wants to sell his development rights and an adjacent property owner wants to donate his development rights in order to provide the match, is it necessary for the farmer to rent the adjacent property that is being donated in order for it to be considered as match?

A: Yes.

13. Q: Are properties whose development rights will be donated for use as local match scored using the same ranking criteria as for farms selling their development rights? For example, what if the donated farm has lower quality soils or has a higher % of woodlands? Would that lower the ranking of the farm selling its development rights?

A: Your responses to the questions identified in Form A regarding all properties comprising the farm that is the subject of your proposal are reviewed and evaluated on an equivalent basis. Upon review of the proposal and a visual survey of each component property, your proposal is then scored. Therefore, if a component property whose donation of development rights is used as local match has lower quality soils and/or a higher % woodland than the other properties on which the development rights will be purchased, the overall score of your proposal may be lower than if all component properties had equivalent soil quality and a majority (and preferably a predominance) of land available for crop and/or livestock production.

14. Q: Are proposals ranked higher if all of the land is included in the application? It seems that in some cases, including only the best soils and only the acres in production would result in a better application and more cost effective utilization of state funds. However, it also seems that proposals are ranked lower when some land is withheld from the application. How would excluding some of the woodlands or wetlands or non-agricultural lands that have lower quality soils affect the proposal's scoring?

A: A proposal scores the highest when each of the farms it contains clearly demonstrates or illustrates each of the three statutory funding priorities as listed in the RFP ("Funding Priorities"). While possessing a predominance of prime soils on land entirely available for crop and/or livestock production would epitomize the desired on-site physical attributes of viable agricultural land, the exclusion of other portions of the farm that may be suitable (even highly desirable) for non-farm development may undermine the long-term viability of the farm operation proposed for permanent protection. However, an excluded lot does not necessarily always

jeopardize the long-term viability of the agricultural land on which the conservation easement will be placed. In fact, some exclusions may not be developable due to physical site limitations or lack of access. In those situations, it may not be problematic to exclude them from the easement area.

15. **Q:** Do parcels of land submitted for funding consideration need to be contiguous?

    A: No. If a farm is comprised of two or more parcels of land, they do not need to be contiguous to be considered for funding. However, parcels that adjoin one another will contribute to a more compelling farm/proposal for funding consideration.

16. **Q:** Does land submitted for funding consideration need to be located along a roadway or otherwise have access?

    A: Yes. Each parcel of land submitted for funding consideration must have legal access for ingress/egress, regardless of whether the parcel is located along a roadway.

17. **Q:** If a farm is located in two counties, only one of which has an approved agricultural and farmland protection plan, is the farm an eligible project?

    A: Yes. The county with the approved plan would be an eligible applicant and the entire farm could be protected with a conservation easement provided that the easement portion in the adjoining county was held by a municipality (or a land trust) in the other county and that the holders of the easements comprising the entire farm enter into a stewardship agreement with the eligible applicant.

    Another option would be for a municipality in either county to be the applicant (if deemed eligible by the Department) and, similarly, the entire farm could be protected with a conservation easement provided that the other easement portion was held by the second municipality (or land trust) in the other county and that the holders of the easements comprising the entire farm enter into a stewardship agreement with the eligible applicant.

    A third option would be for an eligible applicant to enter into an agreement with a single land trust and the land trust would hold all of the easements comprising the entire farm.

18. **Q:** If County A submits a farm that includes acreage in County B and if County B is a co-applicant, does County B count that application as one of the five proposals that it may submit for funding consideration?

    A: Each County applicant is limited to five proposals for conservation easement projects. Therefore, the one County that is serving as the fiscal agent for the awarded contract will have that proposal counted as one of the five that it may

submit for funding consideration; the other County would not be charged with a proposal.

19. Q: Is there any difference in how a farm owned by its operator would be scored versus a farm owned by someone who routinely leases it to another for agricultural use?

A: Not necessarily. Information that you submit for items #1 and #2 of Part D and item #1 of Part E of Form A will be evaluated and scored by the Department as a part of items #2a and #3 of the Technical Rating Form.

20. Q: Is the purchase of an option to buy a conservation easement considered an eligible project cost?

A: No, the State will not contribute toward the cost of an option to buy a conservation easement. If the proposed easement holder wishes to purchase an option, it must fund the cost from sources other than the State.

21. Q: If the Department proposes to award an applicant with an amount less than the local government requested, would it be possible for that local government to accept the lesser amount specifically to only pay for an appraisal, title report and an option to purchase a conservation easement on that particular farm with the expectation that a future supplemental award application would be submitted to cover up to 75% of the remaining eligible project costs?

A: No. If any local government accepts an award from the Department – regardless of whether the proposed award amount is equal to or less than the funding it requested, it is expected that it will be able to complete the proposed project (or a pro-rata version of it) with the funding amount awarded by the State.

22. Q: Is there an opportunity to negotiate a higher percentage of the applicant contribution? It would be appreciated if the state would reach out to the applicant before denying an application.

A: No, there is no opportunity for the Department to negotiate with any applicant about any portion of its proposed project. It is incumbent upon the applicant to submit a proposal that is cost-effective from the perspective of the State's contribution. Accordingly, if an applicant has more than 25% local match to offer for a particular project, it should clearly demonstrate that in its proposal so as to help optimize its competitiveness with other proposals being submitted to the Department for funding consideration.

23. Q: Are there specific restrictions or limitations on the construction of additional farm residences within the conservation easement area? Many of the farmers that we talk to desire to build housing for their children while accepting the fact that these residences would be part of the farm property and not be located on separate

building lots. Presuming the conservation easement covers the entire parcel of land, is this permitted?

A: If additional single-family dwellings are desired, such dwellings should be associated with farmstead area(s) provided that there is a legitimate need for any such residential dwellings and that any such farmstead area(s) are relevant to and consistent with the long-term viability of the agricultural land to be permanently protected.

Local zoning laws should also be reviewed to see whether they will allow multiple homes on the same tax parcel. Most local laws allow only one residence per tax parcel or one residence and a smaller elder care home.

The Department's Standard Agricultural Conservation Easement (revised June 2008) contains the following provisions regarding residential dwellings on the easement area.

4.(c). "Residential Dwelling" means dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, "in-law" apartments, guest houses and farm labor housing, whether or not the structure(s) are used as the primary residence of a farm owner.

4.(d). "Farm Labor Housing" means dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the farm operation. For instance, a structure used as the primary residence of a farm owner is not "farm labor housing".

8.(d). Residential Dwellings

Existing residential dwellings, as defined in Section 4(c), if any, may be repaired, removed, enlarged and replaced at their current locations, which are shown on Exhibit B.

Farmstead Area: Without permission of Grantee, Grantor may construct, maintain, repair, remove or replace residential dwellings, together with accessory structures and improvements within the Farmstead Area, subject to any applicable local, state or federal laws and regulations.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may construct new dwellings or structures and improvements for Farm Labor Housing, as defined in Section 4(d) ("Farm Labor Housing"), on up to 1% of the Farm Area without permission of the Grantee. With permission, Grantor may construct additional Farm Labor Housing in the Farm Area as proven necessary to conduct current farm operations. The land on which these dwelling,

structures and improvements stand shall not be subdivided, except as permitted in Section 11 ("Subdivision").

24. Q: What is the difference between agricultural preservation and open space preservation?

A: Preserving viable agricultural land is indeed distinctive from open space preservation. Preserving open space with a conservation easement most often prohibits/limits land development (particularly commercial use); such easements may allow agricultural use on the protected open space area. Contrastingly, preserving viable agricultural land with a conservation easement most often prohibits/limits non-farm development but would likely allow for agricultural development (i.e., agriculture is a commercial use by definition; e.g., allowing for the expansion or conversion of farm operations may result in more agricultural structures such as barns, greenhouses, etc., to be built on the easement area). In thinking about these differences, please carefully consider the definition of "viable agricultural land" as defined in Article 25-AA of the Agriculture and Markets Law (AML) as well as the purpose of the Agricultural and Farmland Protection Program as established in Article 25-AAA of AML.

25.

24. Q: Regarding a joint application from more than one county, will a resolution from each Agricultural and Farmland Protection Board suffice for the application or must each resolution come from the respective County Board of Legislators?

A: If a County application does not contain County cash as part of the local match contribution, then a resolution from each County's Agricultural and Farmland Protection Board is acceptable.

25. Q: Can the Department's Standard Agricultural Conservation Easement be modified to allow for right-of-first-refusal (to a local municipality)?

A: Yes, but the Department reserves the right to negotiate the specific content of any such provision in any conservation easement it funds under this program. However, a right-of-first-refusal agreement may also be created apart from the conservation easement and entered into between the landowner and the easement holder. Therefore, omitting a right-of-first-refusal from the conservation easement will not preclude the use of this agreement between the two parties if it is desired by the local government awardee or its partnering entity.

26. Q: Is it acceptable to use the average of values from two different appraisals to estimate the value of development rights for a property in an application?

A: Yes, since your estimated value of development rights in the project budget of your application is based on an appraised value. However, for purposes of requesting a disbursement from the State in this scenario, the Department would

accept the local government's use of the higher-valued appraisal (so as to set a ceiling on the appraised value of development rights) provided that the purchase agreement and the easement and the project budget all reflected a bargain sale below that appraised value.

27. Q: What method(s) of estimating the value of development rights would be acceptable for a grant proposal? Would a value based on the State's Agricultural Assessment value (which is based on the parcel's soil types) be acceptable?

A: An appraisal (limited or full) would be the best method. However, given the time constraints and cost of any type of an appraisal, it would most likely be necessary to rely on readily available information to approximate the value of development rights.

As an alternative to an appraisal, the grant applicant could ask each participating landowner for a copy of their most recent property tax bill and simply use the value for only the land. Since the value stated on most property tax bills is a generalized estimate of market value from the previous calendar year and at least one additional year may pass before any awarded project were to be completed, it seems reasonable that this value would not substantially overstate the value of development rights. If that value is lower than what the landowner would accept, then adjust it upward according to a multiplier factor reflecting the necessary adjustment.

Use of the State's Agricultural Assessment value, by itself, would not be an acceptable estimate of value of development rights because such values would likely only reflect a very low estimate of the "after conservation easement" value of the land to be encumbered by the proposed conservation easement. That value is not the equivalent of the value of development rights. However, the value of development rights could be estimated for a subject property if an acceptable "before conservation easement" value could also to be determined. Then, the difference between those two values (i.e., the "before" value and the "after" value) would be an acceptable estimate of the value of development rights.

Regardless of what method is used, the basis for the estimate of value of development rights should be documented by the grant applicant.

28.

28. Q: Given that the State shall not contribute toward that portion of the purchase of development rights that exceeds $29,000/A and the State contribution shall not exceed 75% of total project costs, does that mean the State will provide up to $29,000/A or only up to 75% of $29,000/A (i.e., $21,750/A)?

A: The State may contribute up to 75% of the total costs of your proposed project. However, if the value of development rights substantially exceeds $29,000/A, the State's contribution toward such a project may not achieve 75% of the project's total costs even though the State may have contributed up to $29,000/A for that specific line item in the project budget. To illustrate, please consider the following example for a 100-acre farm:

Value of Development Rights =	$5,000,000

Transactional costs (e.g., legal survey, appraisal, etc.) =	$ 32,000
Transactional costs (in-kind) =	$ 25,000
TOTAL PROJECT COSTS =	$5,057,000
Maximum potential State funding (58%) =	$2,957,000

29. Q: How should staff time of the grant applicant be accounted for in the project budget?

A: If the staff is existing, all such costs shall be considered as in-kind contribution. If the applicant will hire new staff to implement this project, such costs may be considered part of the local cash match and/or may be part of the costs to be covered by the State contribution.

30. Q: How should staff time from other project partners be accounted for in the project budget?

A: Time of existing staff of other project partners (except the landowners) that is necessary to complete the project may be considered as part of the in-kind contribution and/or may be part of the costs to be covered by the State contribution. If any staff time of other agencies is a direct expense paid for by the grant applicant, any such costs (except for the grant applicant's own existing staff) are considered transactional costs and may be reimbursed with the grant award. However, all costs associated with the grant applicant's own existing staff shall be considered as in-kind contribution.

31. Q: Does the $25,000 limit of in-kind contribution apply to a farm or to an individual property comprising the subject "farm"?

A: The $25,000 limit on the amount of in-kind contribution applies to each component property and not to the overall sum of in-kind contributions for multiple properties comprising the farm that is the subject of a proposal.

32. Q: Are there limits for each category of transactional costs other than stewardship fees (which are limited to $10,000 per easement)?

A: The Department has not established limits for transactional costs other than stewardship fees associated with farmland protection implementation projects.

33. Q: Are Geographic Information Systems (GIS)-generated property maps acceptable for identifying project locations rather than using only tax parcel maps?

A: Such maps will only be acceptable if each is based on the tax parcel map (available from your County) for each parcel comprising each farm.

34. Q: What format constitutes a "fully executed" stewardship agreement (as identified as item #5 of reporting requirements)?

A: An acceptable format would be one that includes the signature of each authorized person representing each of the parties entering into the stewardship agreement.

35. Q: Define "significant natural public resource."

A: This phrase is found in Agriculture and Markets Law Article 25-AAA § 325(2)(c), but it is not defined in statute. However, the statute provides that a significant natural public resource must contain "important ecosystem or habitat characteristics". Therefore, the applicant should identify the "important ecosystem or habitat characteristics" that justify the protection of this area.

36. Q: How does item #2a ("likelihood that the project will preserve 'viable agricultural land'") differ from item #3 ("long-term potential for the agricultural land … to remain in viable agricultural production") on the Technical Rating Form?

A: Item #2a focuses on the subject property whereas item #3 considers other factors beyond the scope of the land itself.

37. Q: Are there examples of successful proposals that could be posted on the Department's web site?

A: No. However, proposals from a previous offering (including those that were awarded funds) may be obtained through the Freedom Of Information Law (FOIL) by submitting a request to Rebecca Smith, Freedom Of Information Officer for the Department, at rebecca.smith@agmkt.state.ny.us.

38. Q: Would the NYS Department of Agriculture & Markets' allow for windmills to be located on farms protected by a conservation easement funded by an FPIG grant?

A: Yes, provided that such windmills are consistent with section 8(h) from the Department's Standard Agricultural Conservation Easement document:

8.(h). Alternative Energy and Communications Structures and Improvements
Ancillary structures and improvements necessary to undertake alternative energy and communications activities such as wind, solar, methane and other similar energy generation activities as well as cell towers or 911 communications towers are permitted as further described below provided they are compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

Farmstead Area: Within the Farmstead Area, Grantor may construct such ancillary structures and improvements without permission of Grantee.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), such ancillary structures and improvements, including roads and drainage ditches, may be built in the Farm Area only with the permission of Grantee, which may be conditioned upon the posting of a bond. These structures and improvements are permitted only if the activity is limited and localized in impact affecting no more than two percent (2%) of the Farm Area at one time.

Prior to determining the location of a site for an ancillary structure in the Farm Area, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures.

39. Q: Would the NYS Department of Agriculture & Markets' allow for the removal of gravel with the intention of crop production in the future on farms protected by a conservation easement funded by an FPIG grant?

A: Yes, provided that such removal of gravel is consistent with section 13 from the Department's Standard Agricultural Conservation Easement document:

13. Mining and On-Site Extractive Activity. ***[Presumes no third party ownership of surface mining or other mineral rights]***

Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are permitted only under the following conditions. Grantor may remove sand and gravel on the Property, provided said removal: (a) is limited and localized in impact, affecting no more than two acres of the Property at one time; (b) is compatible with the Purpose of this Easement; (c) is reasonably necessary and exclusively for the Farm Operation; and (d) minimizes the impact to the prime and statewide important soils.

Grantor may undertake subsurface mineral and hydrocarbon exploration, development and extraction activities only with the permission of Grantee, which may be conditioned upon the posting of a bond. Such activities must: (a) be limited and localized in impact; (b) be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property; and (c) minimize the impact to prime and statewide important soils. Grantor shall use all practical means to mitigate any adverse effect on the agricultural viability of the Property in carrying out any permitted exploration, development or extractive activities.

Prior to determining the location of a site for exploration, development or extraction activities, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give

them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures and related extractive activities.

40. Q: Would mining be allowed during the period of time to complete the proposed project prior to the actual conveyance of the conservation easement?

A: The restrictions on any mining activity described in a conservation easement document that will be used for the subject property do not take effect until the easement is conveyed by the landowner to the easement holder. Accordingly, if the landowner has already exercised his right to lease the mineral interests of the subject property to another, any ongoing mining activity could not be controlled without the consent of the mineral interest leaseholder and/or the mineral interest owner. However, the grant applicant (and, if different, the easement holder) must consider what impacts the mining activity may have on the subject property and determine whether the mineral interest owner and/or the mineral interest leaseholder would be willing to subordinate their interests to the conservation easement. If not, the proposed conservation easement may be ineffective in protecting the soils of the subject property or to ensure that the subject property remain in long-term viable agricultural production.

For example, the following options are listed in descending order of preference regarding how an existing oil and gas lease may need to be addressed in order to ensure adequate protection to the subject agricultural land proposed for a conservation easement. Any of these options would be satisfactory to the Department provided the specific language/provision of the selected option is also acceptable to the Department:

(1) have the oil/gas lease released (full release or at least a surface release) from the property that is to be encumbered with the proposed conservation easement;

(2) have the oil/gas lease subordinated to the proposed conservation easement;

(3) have the oil/gas lease amended to designate the allowable specific site(s) for any well and all associated appliances **and then exclude that portion** (or whole tax parcel) from the proposed conservation easement;

(4) have the oil/gas lease amended to incorporate stipulations to address these specific issues (**and then retain the entire farm** within the proposed conservation easement) and perhaps address other issues depending upon the specific provisions or language of the oil and gas lease:

- maximum extent of area that will be associated with each well site and associated appliances,
- whether or not the access road may be paved (i.e., will the access road become an impervious surface?), and
- site remediation must address topsoil quality as well as ground surface contours

(5) incorporate the following stipulations into the proposed conservation easement:

- require the landowner to notify the Department when the location of each well site is to be determined (and give the Department an opportunity to participate in an onsite meeting to determine said location),
- require the landowner to notify the local Soil & Water Conservation District and the Department prior to when a well site is to be reclaimed and restored to agricultural land (and give the Department an opportunity to participate in an onsite meeting to review the proposed reclamation), and
- require that the completed reclamation must be acceptable to the local SWCD and/or the Department – if not acceptable, **the landowner shall be responsible to restore** the site to a condition acceptable to the local SWCD and/or the Department.