

QUESTIONS AND ANSWERS – FPIG Request For Proposals, 2008-2009

Please note the following errata and their corrections in Parts D and F of Form A:

- (1) Part D item #2 = Sentence within [] should reference “Section F (“Maps”)
- (2) Part D item #3 = Sentence within [] should reference “Section F (“Maps”)
- (3) Part D item #4 = Sentence within [] should reference “Section F (“Maps”)
- (4) Part F item #2 = Sentence within [] should reference “F.2. Soil Survey”

We apologize for any confusion and inconvenience.

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

All questions have been submitted in writing; questions include those submitted via email or fax to David Behm, the Department’s Farmland Protection Program Manager, after the announcement of the RFP.

Each question is answered below.

1. **Q:** We are seeking clarification about what kind(s) of horse operations are considered “agriculture.”
 - (a)** In the Section 301 of the Agriculture and Markets Law (AML), the definition of agriculture includes livestock production and lists horses as livestock. Are horse breeding operations considered agriculture?
 - (b)** In the same statute, the definition of “farm operation” includes “commercial horse boarding operation,” whose definition includes certain minimum standards. Is horse boarding considered agriculture?
 - (c)** Is horse training considered agriculture?
 - (d)** Are horseback riding lessons, riding arenas, and trail riding enterprises considered agriculture?

A: **(a)** Horses are identified as livestock as part of the definition of “crops, livestock and livestock products” under Agriculture and Markets Law (AML) Section 301, subd. (2). Therefore, the Department has consistently viewed the raising, breeding, boarding and sale of horses to be considered agriculture and also to be part of a “farm operation,” which is defined under AML Section 301, subd. 11.

(b) As answered in (a) above, the Department has consistently viewed horse boarding operations as agriculture. “Commercial horse boarding operation” is specifically defined under AML Section 301, subd. (13), and cites the minimum standards referenced in this question. As a matter of general guidance on this topic, please refer to the Department’s Guidelines for Review of Local Laws Affecting Commercial Horse Boarding Operations for additional clarification. You may observe or download the guideline document at

<http://www.agmkt.state.ny.us/AP/agsservices/guidancedocuments/305-a%20Horse%20Boarding%20Guideline.pdf>.

(c) A horse boarding operation provides care, housing, health related services, and training to animals kept on properties owned or leased by the farm operator. Riding, and training activities that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and used for such

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activities, are part of the farm operation. Accordingly, all such activities would be considered agriculture.

(d) The Department does not consider a riding academy to be an agricultural activity under the AML. A riding academy generally offers riding lessons to the public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the farm for such riding.

2. **Q:** Is it appropriate that the estimated value of development rights include a projected escalation in value to cover the lag between the date of submitting the application and the anticipated date of closing on the conservation easement transaction?

A: Yes. Indeed, every estimate of the value of development rights should factor in the date of the closing of the conservation easement transaction as well as the date of submission of the application. In doing so, it would be appropriate to factor into your estimate a reasonable increase over the contract period (to account for the period of time between the submission of the application and the closing of the conservation easement transaction) that would address a potential escalation in land values over that period of time.

However, the final disbursement for any given project will be based upon an acceptable appraisal that adequately supports the actual purchase price of the conservation easement.

3. **Q:** We would like to include an Option to Purchase at Agricultural Value (OPAV) in our conservation easement.

(a) Is the cost of estimating the value of an OPAV an acceptable cost to include in the appraisal for the Purchase of Development Rights (PDR) project?

(b) Is the cost of acquiring or exercising an OPAV an acceptable cost to include in the project budget of a PDR project?

A: (a) Yes. Since you intend to insert an affordability provision into your conservation easement for the proposed PDR project, it would be acceptable to incorporate that portion of the overall cost of preparing the appraisal that is specifically associated with estimating the value of an OPAV.

(b) The State will contribute toward the cost of acquiring an adequately documented OPAV that is acquired as part of the conservation easement transaction. However, the State will not contribute to the cost of a future exercise of an option to purchase the encumbered farm at agricultural value. (As stated in the answer to Frequently Asked Question #20, the State will also not contribute toward the cost of an option to buy a conservation easement.) If the proposed easement holder wishes to exercise such an option, it must fund such costs from sources other than the State.

4. **Q:** Is it acceptable to include in one proposal both a conservation easement-based project and a related implementation activity associated with implementing the applicant's farmland protection plan? If so, how would it be incorporated into one proposal and one budget?

A: No, each separate farmland protection implementation activity (whether a conservation easement project or another type of farmland protection implementation

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activity) must be the sole subject of an application submitted to the Department in response to this Request For Proposals (RFP). Also, as stated in the RFP, each eligible County may submit up to five (5) proposals and each eligible Town may submit up to two (2) proposals. Therefore, these two distinct activities would require that two separate proposals be submitted from the eligible applicant.

5. **Q:** Can costs associated with fundraising for the required 25% match amount be counted as an in-kind contribution (most likely from a local land trust)?

A: No, because fundraising is not considered an eligible cost item under this RFP. Further, at the time of submitting the application to the Department, each eligible applicant must already possess or have commitments to obtain from their funding partners the required local match (no less than 25% of total project costs) for each project that the applicant is submitting for funding consideration.

6. **Q:** One of our Geographic Information System data layers categorizes soils as “prime”, “prime where drained”, and “statewide importance”. Can we classify “prime where drained” as “prime” for the purposes of the application?

A: Yes, but please be certain to distinguish “prime” soil map units from “prime where drained” soil map units on any soils map of any property comprising the farm that is the subject of the application.

Although not required, it would also be helpful to add a footnote beneath the “Soils and Landscape Information” table on page 6 of Form A (part C, item 3) that clearly indicates both the specific acreage and the specific % for that portion of “prime soils” that is comprised exclusively of “prime where drained.”

7. **Q:** Is there any limit to the number of easements an entity can hold or co-hold? For example, could a Town submit its limit of two farms and the County submit its limit of 5 farms, with the Town and County co-holding the easements on all seven?

A: There is no limit to the number of easements that may be held or co-held by any entity associated with any FPIG award(s). That decision is determined by the easement holders since they bear the perpetual responsibility of the stewardship, enforcement, and defense of each conservation easement that is conveyed to them.

8. **Q:** For item #2 of part B of Form A, is it necessary to identify all tax parcels owned by the landowner especially those that are intentionally excluded from the proposed conservation easement area described in the application? If so, why is it necessary to include them in this table?

A: No. Accordingly, please note the following correction to this item in part B of Form A; the phrase preceding the table should be deleted in its entirety and replace with the following text –

“List below only (but each and every of) those tax parcel numbers (and the acreage associated with each parcel as designated on the official County tax maps) proposed to be included under this easement.”

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9. **Q:** What exactly is an atlas map? Is this a technical term?

A: As used in this RFP, an “atlas map” is intended as a generic term to simply mean any one of the numerous compilations of maps of New York State that may illustrate landscape features relevant to and useful in depicting certain information requested in part F of Form A. Subject to copyright laws, please feel free to use any such map as a base map onto which the requested information will be illustrated.

10. **Q:** Is there any competitive advantage to including the optional site plan with the farm proposal? If a landowner chooses not to include this, could it negatively impact the review of their application in any way (i.e., in the assignment of points for the scoring of that application)?

A: There is no competitive advantage to including a site plan in an application. In other words, the applicant will not receive any “bonus” points nor will the applicant more likely or easily receive a higher proportion of the total points attributed to any of the items on the Technical Rating Form if a site plan of the subject farm is incorporated into the application submitted for funding consideration.

Correspondingly, if no site plan is incorporated into the application, there is also no “negative impact” on the score attributed to that application.

However, insertion of a site plan is encouraged for the following reasons; doing so –

- (1) demonstrates a clear and mutual understanding of the proposed project by all principal parties (i.e., landowner, project manager and, if other than project manager, a representative of the applicant) as indicated by their respective signatures on that document; and
- (2) enables the proposed project, if subsequently selected for funding, to potentially be completed in a more expeditious fashion if the awardee (especially upon notification of an FPIG award) then immediately submits a proposed conservation easement (drafted for that specific property and site plan) and requests the Department to conduct a preliminary review of the proposed project.

PLEASE NOTE: The cost of preparing a site plan as part of the application is not eligible for reimbursement under any subsequent FPIG award nor is it eligible to be considered an in-kind contribution of local match because the costs would have been incurred prior to the beginning date of the resulting FPIG contract.