FREQUENTLY ASKED QUESTIONS – FPIG Request For Proposals, 2006-2007

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 three different property owners (e.g., three generations of the same family) each owning a separate parcel of that farm, is this scenario considered one farm or three different farms for the sake of a grant application?

   A: Since the three landowners operate the three parcels as one farm, this would be considered one farm (toward a maximum total of three farms allowed in the grant application). However, this scenario would result in three distinct conservation easements for this single farm.

3. 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 or two different farms for the sake of a grant application?

   A: Since the two parcels are operated together as one farm operation, this would be considered one farm (toward a maximum total of three farms allowed in the grant application). However, because each parcel is separately owned, this scenario would result in two distinct conservation easements for this single farm.

4. Q: If a proposal includes a "match" property (whereby a landowner will donate a conservation easement to cover the local match requirement for the other farms comprising the request for state funds), would it count as one of the three farms?

   A: No, provided no state financial assistance is requested for any cost associated with closing the donated conservation easement transaction. However, the closing date for the donated conservation easement transaction **must occur within** the timeframe of the contract period **and it must occur before** the closing date of all other conservation easement transactions associated with the farms described in your proposal. If not, the value of the fully donated development rights will not be eligible as local match.

5. 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. If two or more farms are submitted as part of an overall proposal, they do not need to be contiguous to one another to be considered for funding. However, in both situations, parcels/farms that adjoin one another will contribute to a more compelling farm/proposal for funding consideration.

6. 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.

7. 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.

8. 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 #3, #4, #5, and #9 of Part 2 of Form A will be evaluated and scored by the Department as a part of items #2a, #3, and #6 of the Technical Rating Form.

9. Q: What document is needed to demonstrate landowner commitment as referenced in item #9 of Part 2 of Form A ("indicating a willingness to participate in the program and to provide a match of funds, if any needed")? Is the farmer expected to partially fund the program without knowing the dollar amounts?

   A: A dated letter (or equivalent written statement) signed by the landowner is the required document. If the required local match is, in part or whole, to include a landowner donation (typically realized through a bargain sale of the conservation easement), then the letter must clearly acknowledge the landowner's willingness to provide (in part or whole) the required local match. The letter need not specify a dollar amount. It is the grant applicant's responsibility to have all necessary financial commitment(s) in place at the time the application is submitted to the Department so as to fulfill its local match requirement.

10. Q: What documentation is needed to indicate and account for the required local match?

    A: None, unless a landowner participating in the proposed project is providing any of the required local match through a full or partial donation of the value of development rights on his/her property (if so, refer to question #9). While the local government applicant is responsible for having all necessary financial commitment(s) in place at the time the application is submitted to the Department, there is no specific requirement to document the commitment(s) made by the applicant or other units of government or any organizations that are providing any portion of the required local match.

    Actual documentation of all required local match will be required when the awardee requests a disbursement of the State's contribution toward the total project costs of the awarded project.

11. 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.

12. 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
Administrative costs (e.g., legal survey, appraisal, etc.) =	$ 32,000
Administrative costs (in-kind) =	$ 25,000
TOTAL PROJECT COSTS =	$5,057,000
Maximum potential State funding (58%) =	$2,957,000

13. 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, all such costs shall be considered part of the local cash match.

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

    A: Staff time of other agencies that is donated to the grant applicant shall be considered as in-kind 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 administrative 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.

15. Q: Is the in-kind contribution limited to $25,000 per project (i.e., farm) or to $25,000 per proposal (i.e., up to three farms)?

    A: The $25,000 (or 80% of local match) limit on the amount of in-kind contribution applies to each project (i.e., farm) and not to the overall sum of in-kind contributions for a multi-farm proposal.

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

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

17. 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.

18. 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.

19. 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.

20. 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.

21. Q: Are the funds available for grants allocated across the regions of the State?

    A: No. Grant awards are not determined using any type of allocation formula. All eligible proposals will be scored according to the stated criteria and funding priorities, and ranked in order of overall score from highest to lowest. Awards will be made in order of rank, beginning with the top ranked proposals and continuing until available funds are exhausted, or until all worthwhile projects are funded, whichever occurs first.

22. 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 Jessica Chittenden, Public Information Officer for the Department, at jessica.chittenden@agmkt.state.ny.us.

23. 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 12(k) from the Department's Standard Agricultural Conservation Easement document: "*Ancillary Improvements* – Without permission from Grantee, other improvements, including, but not limited to facilities for the generation and transmission of electrical power or telecommunications, such as cell towers, windmills, detached solar arrays may be built within the Farmstead Complex[es]. Such improvements may be built outside the Farmstead Complex[es] only with the permission of Grantee, pursuant to Section _____ ("Permission")."

24. 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 17 from the Department's Standard Agricultural Conservation Easement document:
    "**Mining and On-Site Extractive Activity**

    Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method is prohibited, except as otherwise provided herein. 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) does not conflict with the Purpose of this Easement; (c) does not breach the water table; and (d) is reasonably necessary for, and incidental to, carrying out the improvements and agricultural production uses permitted on the Property by this Easement; and (e) impact to the prime, statewide important and unique soils is minimized.

    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. Grantor shall use all practical means to mitigate any adverse effect on the agricultural viability of the Property in carrying out any permitted extractive activities."

25. 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 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.