**QUESTIONS AND ANSWERS – FPIG Request For Proposals, 2006-2007**

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 during the Applicant Workshops conducted on April 18th, 19th, 25th, and 27th, 2006, as well as 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: 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 #1-3 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. However, if both "farms" were funded, it would require three conservation easements.

2. Q: Regarding the farmer and neighbor "B" as described in question #1 – 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.

3. 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.

4. Q: Regarding this RFP and the Technical Rating Form –
   (a) The title of the RFP contains the word, “implementation.” What does this mean?
   (b) On page 7, reporting requirement #5 refers to a "fully executed stewardship agreement" – is an example of a stewardship agreement available?
   (c) Does Agricultural Environmental Management play a role in the Farmland Protection Implementation Grants program?

   A: (a) As stated in the “Eligible Costs” section of the RFP: “This grants program is intended to implement activities identified in or consistent with approved county agricultural and farmland protection plans or in municipal farmland protection plans where the proposed activity has been approved by the county agricultural and farmland protection board.”

   (b) A stewardship agreement is simply a formal written agreement between the local government receiving the award and the holder(s) of the conservation easement and (if applicable) any other entity serving as a third party with right of enforcement of the conservation easement. Most often, a stewardship agreement will address the following considerations: (1) identification of the holder(s) of the conservation easement; (2) if more than one holder, designation of the “lead grantee;” (3) if applicable, identification of the entity serving as a third party with right of enforcement of the conservation easement; (4) designation of each entity’s duties and responsibilities as they relate to the perpetual stewardship of the conservation easement; and (5) administration of the stewardship funds designated for the conservation easement (and the disposition of those funds in the event that the easement is ever assigned to a different holder or if the easement is ever extinguished). Easement stewardship entails monitoring of the subject property and any easement enforcement/defense actions that may arise.

   (c) A landowner’s participation in the Agricultural Environmental Management (AEM) program is not specifically considered by the Department when rating proposals submitted pursuant to this RFP. However, a landowner’s participation in AEM would be relevant to incorporate in the applicant’s response to item #4 (“Nature of Farm Enterprise”) of Part 2 of Form A.

5. Q: Our municipality is considering submitting two proposals each containing one farm. Is this acceptable, or must the two farms be contained in one proposal?

   A: Yes, it is acceptable to submit two proposals with only one farm included in each proposal.

6. Q: (a) Is the purchase of an option to buy a conservation easement considered an eligible project cost? What if the option cost was an additional expense that added to the total project costs? What if the option cost was applied to the final easement purchase price and would not increase total project costs?

(b) Would the Department be willing to make payment on the purchase of an option prior to the final approval of required documents and final payment is made for the easement purchase?

A: (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.

(b) No.

7. Q: (a) 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?
(b) Would a separate application need to be submitted if the local government was willing to accept only the funding necessary for purchasing an option?

   A: (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.

   (b) The State will not contribute toward the cost of an option to buy a conservation easement. Therefore, the Department would not fund an application that proposed the purchase of options as a farmland protection implementation activity.

8. Q: (a) Does the 3-farm limit apply only to those applications requesting funding to purchase agricultural conservation easements?
(b) Could more than three farms be submitted in a proposal if the funding being requested was to purchase options?

   A: (a) Applicants submitting any conservation easement-based proposal may not include more than three farms. Easement-based proposals include easements that are donated and purchased or whether they are Purchase of Development Rights (PDR) or Transfer of Development Rights (TDR) conservation easements.

   (b) The State will not contribute toward the cost of an option to buy a conservation easement. Therefore, the Department would not fund an application that proposed the purchase of options as a farmland protection implementation activity.

9. Q: Would the Department be willing to make payment on survey expenses, especially expensive surveys on larger farm operations, prior to the final approval of required documents and before final payment is made?

A: No. Pursuant to this RFP, funds will not be disbursed until the project closes.

10. Q: Do you have a list of approved and/or recommended stewardship activities? It would be helpful to have some guidance on what types of activities are involved and what is expected.

    A: The Department does not have a list of approved and/or recommended stewardship activities. See the answer to question #4(b) for some guidance on what is commonly included in a stewardship agreement.

11. Q: Is there an opportunity to negotiate a higher percentage of the applicant contribution? Fiscal prudence on the part of the applicant warrants submitting an application requesting the full 75% state contribution. However, there may be additional funds available to increase the portion of the applicant's share. As such, 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.

12. 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, each should be associated with a reserved farmstead complex provided that there is a legitimate need for any such additional farmstead complexes and residential dwellings and that any such farmstead complexes 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 contains the following provisions regarding residential dwellings on the easement area.

12(d) *Existing Labor Housing* -- All existing dwellings or structures used for Farm Labor Housing may be repaired, enlarged and replaced at their current locations as shown on Exhibit ___.

12(e) *New Farm Labor Housing* – Without permission of Grantee, Grantor has the right to construct new dwellings or structures, together with new agricultural structures and improvements permitted in Section __(c) above, on up to 5% of the remaining farm area, for Farm Labor Housing as defined herein. With advance written permission of the Grantee, pursuant to Section ____ (Permission), Grantor has the right to construct such Farm Labor Housing within the remaining Farm Area. The land on which these structures stand shall not be subdivided, except as permitted in Section ___ (Subdivision).

12(f) *Existing Single-Family Residential Dwellings* -- All existing single-family residential dwellings, if any, may be repaired, enlarged and replaced at their current locations, which are shown on Exhibit B. Grantor has the right to establish and carry out home occupations or cottage industries within said permitted residential dwellings provided said activities are compatible with the agricultural character of the Property and subordinate to the agricultural and residential use.

13. Q: (a) What happens if the land proposed for protection is no longer used as an agricultural operation?
(b) What obligation does a property owner have to continue the agricultural operation and what obligations do the applicants have if agricultural activities on the property cease?
(c) Are there guidelines for this situation?

A: (a) There are no consequences if the protected land is no longer used as part of a "farm operation."

(b) The Department does not obligate the current or any future landowner to use the protected land as part of a "farm operation." Similarly, the Department does not place any obligations or requirements on any local government awardee if the protected land is not used as part of a "farm operation." However, if a funded project results in a conservation easement, please note the following provision from the Department's Standard Agricultural Conservation Easement:

**11. Maintenance**.

Should the property cease to be used for agricultural purposes for more than three (3) years, the agricultural fields containing prime, statewide important and unique soils will be mowed in accordance with the Conservation Plan at least triennially or otherwise maintained in a condition which will prevent growth of woody vegetation that would interfere with future agricultural use or which might result in interference with drainage systems, or in reversion of significant portions of the Property to regulated wetland status. Similarly, during prolonged periods of disuse for agricultural purposes, artificial and natural drainage systems must be maintained in a functional state by the Grantor. If Grantor does not comply

with this provision, Grantee shall have the right, but not the obligation, to mow such fields, at Grantee's sole expense, if it so chooses.

(c) Other than providing sample language from the Department's Standard Agricultural Conservation Easement, the Department has not provided any other guidance regarding these matters.

14. Q: (a) Some guidance material on the difference between agricultural preservation and open space preservation might be helpful, particularly in suburban counties where agricultural preservation is often thought of as open space preservation.
(b) To what extent can local communities define what agriculture is in their community or prioritize the types of agricultural operations to protect?

A: (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.

(b) For local governments seeking financial assistance from the State to implement their local farmland protection implementation activities under the Farmland Protection Implementation Grants program, an applicant must be consistent with the three statutory funding priorities as stipulated on page 5 of the RFP ("Funding Priorities"). Any local government making application to the Department may prioritize the types of farm operations it desires to protect, but all proposals evaluated by the Department must still be consistent with the statutory funding priorities previously mentioned.

15. Q: Regarding a joint application from more than one county –
(a) 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?
(b) Is a proposal scored lower if the holding of the easements are split between the participating counties (County "A" holds easement on parcels located in County "A" while County "B" holds easements on parcels located in County "B")?
(c) If easement holdings on the same farm can be split between joint applicants, is there still a $10,000 limit on stewardship or can it be doubled since two entities are holding the easements?

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

A: (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.

(b) No, since County "A" would not be legally authorized to hold easements in County "B" and vice versa. However, a lower score may result if any other entity in addition to one of the Counties were to hold the resulting conservation easements. A lower score may result since multiple holders of easements on one farm operation may be problematic for the landowner due to the possibility of inconsistent stewardship of the respective easements and its effect on the overall management of the farm operation. In such a case, it may be advisable to involve a land trust operating in both Counties to serve as the solo holder (or at least co-holder) of both easements on the single farm operation.

(c) Since two conservation easements will effectively result from this scenario, each easement may receive up to $10,000 for a stewardship fee. Accordingly, each County may request up to $10,000 for a stewardship fee for its respective easement associated with this single farm operation.

(d) No, the Department does not allow right-of-first-refusal provisions in any conservation easement it funds under this program. However, a right-of-first-refusal agreement may 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.

16. 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.

17. Q: If a farmer owns a property and rents another property and both landowners want to sell their development rights, is that considered one farm for the application?

    A: Yes. Please refer to Frequently Asked Questions #1 (definition of "farm operation" includes rented land) and #3 (similar scenario) for more information.

18. 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, would they be considered one farm for purposes of the application? 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: No, these two farms would not be considered one farm for this application. Each farm would be separately reviewed and a visual survey conducted of each as part of evaluating and scoring the proposal. Also, it is not necessary for the donated match property to be rented by the farmer in order for that property to be considered as match.

19. 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 farms in your proposal are reviewed and evaluated on an equivalent basis. Upon review of the proposal and a visual survey of each farm, your proposal is then scored – individual farms are not numerically scored. Therefore, if a match property has lower quality soils and/or a higher % woodland than the other one or two farms on which the development rights will be purchased, the overall score of your proposal may be lower than if all farms had equivalent soil quality and a majority (and preferably a predominance) of land available for crop and/or livestock production.

20. Q: If the three highest scoring applications are from a county and two towns within that county, would all three be awarded funding or would the second and third ranking proposals be skipped over because they are in the same vicinity as the top proposal?

    A: Awards will be made in order of rank, beginning with the top ranked proposal and continuing until available funds are exhausted, or until all worthwhile projects are funded, whichever occurs first. The Department does not consider geographic distribution when awarding funds.

21. 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 on page 5 of 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.