

FREQUENTLY ASKED QUESTIONS – Round 13 FPIG Request For Applications (Funding Opportunity announced December 17, 2013)

Some of the following questions have been submitted to the Department of Agriculture and Markets regarding this Request For Applications (RFA) for the Farmland Protection Implementation Grants (FPIG) program.

Other questions were previously submitted in response to the RFA for the Farmland Protection Planning Grants (FPPG) program or previously submitted in response to prior Request For Proposals for FPIG; those have been added here because they are relevant to this RFA.

Each question is answered below.

1. Q: What is the deadline for submitting the grant application to the Department?

A: No deadline exists. Successful applications will be funded on a first-approved, first-awarded basis until the approximately \$500,000 made available for such grants has been awarded.

2. Q: What kind of response should be submitted to the Department?

A: Applicants need to respond by completing Application Attachments #1 through #6, including any additional information requested on the attachments. Then, the applicant must submit one signed original set plus two photocopies of the signed application package to:

Lucy Roberson, Director
Division of Fiscal Management
NYS Dept. of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

3. Q: Will a municipal resolution be required for submitting the application?

A: Yes. The authorizing resolution must be signed by the chief elected official of the municipality's legislative body.

4. Q: If two municipalities intend to submit a joint application, how should they go about submitting that application to the Department?

A: First, a joint application may be formally approved by each municipality through an inter-municipal agreement. Each municipality must still submit its own authorizing resolution as described above to question #3.

Second, as noted on Application Attachment #1, each municipality must complete that page for each applicant and attach both as the "first page" of their joint application.

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Lastly, all responses to the information requested on Application Attachments #2 through #6, including any additional information requested on the attachments, must represent the collective response from both municipalities to each item.

5. Q: Can you explain the basic match requirement for this grant program?

A: The local match requirement for this program is 25% of total project costs. Maximum state funding is 75% of total project costs, not to exceed \$15,000.

Example:

Total project costs = \$20,000
State contribution (@75%) = \$15,000
Local contribution (@ 25%) = \$ 5,000

Comprised of:

- *Minimum cash match (@20%) = \$1,000*
- *Maximum in-kind contribution (@80%)= \$4,000*

6. Q: How should the local cash match contribution be documented?

A: A municipality may identify the cash match contribution by resolution or in a letter from an authorized municipal official obligating the cash match contribution. Please attach cash match documentation to the application.

7. Q: How should in-kind staff time contributions be documented and retained on file by the applicant?

A: To document staff time, the Department recommends that you retain a copy of your entity's 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.

8. Q: May time served by volunteer members of a municipality's planning board be counted as an 'in-kind contribution' towards the required local match?

A: No.

9. Q: Are indirect or overhead charges acceptable as part of the municipal match?

A: No. Both indirect and overhead charges will not be accepted as any part of the required local match contribution.

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10.Q: Our town board passed a resolution giving the Supervisor blanket authority to seek funding for any recommendation in its adopted farmland and open space protection plan. Transfer of Development Rights was a recommendation in that plan. Will that resolution suffice or does the town need to pass another resolution specifically authorizing submission of TDR program proposal and the matching funds?

A: Your existing resolution will suffice for one of the two required resolutions that need to be included in the town’s application. Your existing resolution will serve as a resolution authorizing the town to make a request for State funds. However, the town board must also approve a resolution that specifically acknowledges/documents the town’s actual cash contribution as part of the local match required for this grant opportunity.

11.Q: If awarded under this RFA, can the town’s resulting TDR program encompass other conservation values such as streamside buffers, trails, wildlife habitats as well as farmland?

A: Yes.

12.Q: Does the Town need to have a Farmland Protection Plan in place, in order to apply for a grant to establish an implementation-ready TDR?

A: As stated in this RFA, “To be eligible for funding under this RFA, projects must, at a minimum, be consistent with the activities, programs and strategies ***found in the applicant’s agricultural and farmland protection plan.***” {***emphasis added***} The Department will accept a municipality’s “plan” (regardless of how it is entitled) provided that the content of any such document is consistent with AML Section 324-a (1), which states:

1. Municipalities may develop agricultural and farmland protection plans, in cooperation with cooperative extension and other organizations, including local farmers. These plans shall include, but not be limited to:
 - a) the location of any land or areas proposed to be protected;
 - b) an analysis of the following factors concerning any areas and lands proposed to be protected;
 - i) value to the agricultural economy of the municipality;
 - ii) open space value;
 - iii) consequences of possible conversion; and iv) level of conversion pressure on the lands or areas proposed to be protected; and
 - c) a description of activities, programs and strategies intended to be used by the municipality to promote continued agricultural use, which may include but not

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be limited to revisions to the municipality’s comprehensive plan pursuant to paragraph (a) of subdivision two of section two hundred seventy-two-a of the town law and land use regulations as defined in paragraph (b) of subdivision two of section two hundred seventy-two-a of the town law as appropriate.

13.Q: In Section II B of the RFA, it mentions that the proposed changes to local laws must be consistent with the Farmland Protection Plan. Must the Town have a Farmland Protection Plan or would this just refer to the County Farmland Protection Plan for towns that lack their own plan?

A: The municipality submitting an application in response to this funding opportunity must have its own “plan”; a municipality could not rely on a County’s Agricultural and Farmland Protection Plan. For more information regarding what is meant by a “plan,” please refer to the answer to Question #12.

14.Q: In Section III E (1) of the RFA, the first bullet point mentions “that municipal applicant’s audit.”

- (a) Is there an audit template or approach to be followed or is it up to the town to conduct the audit of its local laws?
- (b) Is conducting the audit part of the activity under this grant?

A: (a) There is no “template” or standardized approach to an audit of local laws. The municipality may create its own format.

(b) The audit must be completed prior to submitting an application in response to this RFA because a copy of that audit must be submitted as part of that application.

15.Q: Could you provide any guidance about the timing of the review of applications after they are received at the Department?

A: Following the posting of these “Frequently Asked Questions” on the Department’s web site, the Department’s Farmland Protection Program Manager intends to acknowledge and review each application within 15 business days of its receipt. If deemed complete, the Program Manager shall then forward the application for funding consideration to the Director of the Division of Land and Water Resources for approval by the Commissioner. Upon approval for an award, the Program Manager will then develop a funding agreement with staff assistance from within the Department and in collaboration with the municipality.

16.Q: Could you provide any redacted agriculture-centric audits of zoning laws?

A: A sample audit is available [here](#). Additional samples may be requested by contacting [John Brennan](#), Farmland Protection Specialist.

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17.Q: Are there any publications on the topic of agriculture-centric audits of zoning laws?

A: Not exactly. However, the American Farmland Trust prepared a publication whose appendices may give you some additional background and additional examples of local laws that may help support agriculture; [view that publication here](#). In addition, the American Farmland Trust conducted a webinar that touches on this topic; [view the webinar here](#).

18.Q: Can a town, in addition to adopting a local TDR ordinance, use TDR grant monies to revise town-wide GEIS findings that establishes a mitigation fee that funds a local PDR program, if the TDR ordinance and revised findings would equally mitigate the potential impact identified in the GEIS?

A: No, because revision of the GEIS findings would not be an amendment of a local law or related to the establishment of a TDR Program.

19.Q: During the webinar for potential applicants, you mentioned that a grant award to establish an implementation-ready TDR program can only be used to revise existing zoning ordinances. I'm assuming you meant that a town can use grant monies to adopt a new TDR ordinance as long as it already has zoning, not that the grant can only be used to revise an existing TDR ordinance. Is that correct?

A: This grant opportunity may be used to *establish* a TDR program; it shall not be used to revise an existing local law for an *existing* TDR program.

A TDR program requires the designation of “sending” and “receiving” zones wherein lands are protected from development (within “sending zone”) and other lands are allowed to be developed more intensely than what is allowed by its underlying zoning. Thus, land use zoning (whether as one comprehensive zoning ordinance or as multiple topic-specific zoning ordinances) would need to be in existence already in the municipality. Accordingly, an amendment to that municipality’s zoning (again, regardless of whether that zoning was authorized by one comprehensive zoning ordinance or through a multitude of individual zoning ordinances) must be adopted by that municipality so as to establish a TDR program as the result of an award through this RFA. However, if a municipality has already established a TDR program, any amendment to that existing law would not be an eligible activity or eligible expense with this grant opportunity.

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- 20.Q:** Is the cost for consultants to figure out the financial aspects of a TDR program an eligible project expense? By financials aspects, I mean the market research to determine:
- a. the range of values for development rights in the sending area (a qualified appraiser looking at an area, not just a single property);
 - b. the transaction costs of conservation easement-PDR projects;
 - c. easement stewardship funds;
 - d. the cost of administering the program;
 - e. soliciting and ranking farmland conservation applications;
 - f. serving as the development credit “bank;”
 - g. the resultant value for selling development credits;
 - h. the definition of a development credit relative to residential, commercial and industrial development projects;
 - i. promotion and education of the program to farmers and to developers; and
 - j. the development industry’s tolerance, and acceptance and likelihood of utilizing the resulting calculated value for development credits.

A: Yes, provided that the overall project results in the adoption of an amendment to that municipality’s local law(s) to establish an implementation-ready TDR program.

- 21.Q:** Is it acceptable for a local TDR law that was funded using an award under this RFA to allow for future inter-municipal compacts to accommodate the trade of development rights/credits between communities?

A: Yes.

- 22.Q:** Can the RFA be amended to allow for county or regional applications in the future?

A: Only municipalities are eligible applicants under this RFA because municipalities have home rule authority to pass local laws related to zoning, planning, land development and natural resource conservation in the State of New York. Accordingly, there is no reason to amend this RFA.

However, any application responding to this RFA may involve a County as a project partner, particularly if that County were to provide services to the municipality to assist in administering an implementation-ready TDR program resulting from an award to that municipality under this RFA. Furthermore, if a group of municipalities (particularly if located in the same County) wished to collectively make individual or multiple joint applications, they also could partner with that County in a county-wide or regional TDR program.

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23.Q: If a private firm is contributing professional services to the project, would their contribution be considered a cash contribution, since they would be paying their employees?

A: No. However, the cost of providing those professional services would be allowed as part of the required local match as an in-kind contribution.

24.Q: If a non-profit is contributing professional services to the project, would its expense be considered a cash contribution, since it would be paying its employees?

A: No. However, the cost of providing those professional services would be allowed as part of the required local match as an in-kind contribution.

25.Q: The RFP states: “Each proposed local law shall address all of the unreasonable restrictions identified in that municipal applicant’s audit of its local laws.”

If a municipality’s audit contains more items that it wishes to address at this time, should the municipality –

- (a) modify its audit to remove from it those items that the municipality does not wish to address at this time before submitting that audit with its grant application, OR
- (b) submit a grant application with the audit “as is” with the understanding that it is not obligated at this time to remove “all” unreasonable restrictions identified in that audit under this one grant.

A: (a) No.

(b) No.

The municipality should address all of the unreasonable restrictions it has identified in the audit of its own laws if it wishes to use State funds to help it amend its local laws to remove those unreasonable restrictions. The municipality is always free to pursue improving its own local laws in a manner and at a pace that is best suited for itself. However, if the municipality has already addressed some of the unreasonable restrictions identified in its audit, it should indicate that in its application and provide documentation as to how it has already addressed those particular unreasonable restrictions.

26.Q: Some of the recommendations in the audits of zoning and subdivisions recommend provisions that would increase support for agriculture, rather than remove unreasonable restrictions. Examples might include allowing non-farm related businesses on farm properties to accommodate diversification of income or creating a guidebook for subdivision designs to encourage farm-friendly conservation and conventional subdivisions.

(a) Would these types of local law amendments be an eligible project under this funding opportunity?

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(b) If such a guidebook is recommended in the audit of zoning and subdivision regulations, would the compilation and publication of the guidebook be eligible for funding through this grant opportunity?

A: (a) If amendment of local law(s) resulted in removing a prohibition on a non-farm activity on a farm operation or on agricultural land that would reasonably be deemed to be otherwise compatible with the agricultural use of that property, then such amendment of local law(s) would indeed be an eligible activity under this grant opportunity.

However, amending a local law to identify the need for or the authorization to create any guidebook regarding land use activities would not be an eligible activity under this grant opportunity.

(b) No.

27.Q: A municipality may want to remove unreasonable restrictions to agriculture as part of a comprehensive revision to its zoning regulations.

- (a) Could it use grant funding to cover the costs of part of this endeavor?
- (b) Could it hire a consultant for the comprehensive revisions and specify the ag-related portion as a separate phase of the contract with the consultant?
- (c) Or would the municipality need to have two separate contracts with the consultant?

A: (a) Yes, the municipality may use the grant funding to cover that portion of its total cost that is directly attributable to the removal of unreasonable restrictions on farming operations and agricultural lands.

(b) Yes.

(c) No, the municipality would not be required by the Department to have separate contracts to distinguish between work that would be eligible under this grant opportunity vs. that which would not be eligible under this grant opportunity. Rather, the municipality is free to determine how it wishes to contract for any/all such services associated with the comprehensive revision to its zoning ordinances.

28.Q: Completion of the new Short Form EAF will be required prior to Town adoption of revised zoning laws. If the Town is considering comprehensive zoning revisions at the same time as the agriculture-related revisions, –

- (a) could the grant pay for a pro-rated portion of the cost of complying with SEQR?
- (b) does the ag-related component need to be adopted separately, with a separate SEQR review and public hearing notice?

A: (a) Yes.

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(b) No, the municipality would not be required by the Department to conduct separate reviews and to adopt separate actions. Rather, the municipality is free to determine the manner in which it wishes to conduct such review and how it wishes to formally act on and to document such action regarding SEQR.

29.Q: NYSDAM has indicated that we'd need to have a number of things in place prior to applying for funding: S and R zones designated, DR and DC valuations, program costs outlined, criteria for ranking properties applying for PDR, administrative MOU drafted, etc. would all need to be done prior to applying. Will the work described above need to be completed prior to the Town submitting an application to develop a TDR program?

A: Some of the work you have identified in your question **does not** need to be completed prior to submitting your application.

Please note the following answer/correction/clarification to each work item you identified in your question:

- “S and R zones designated” (i.e., “Sending and Receiving zones) = *only a preliminary location* of each such zone *must be illustrated in the application* (refer to the top of page 13 of the RFA)
- “DR and DC valuations” = the RFA does not require the submission of any such valuations as part of the application to be submitted to the Department
- “program costs outlined” = such costs must be identified in a project budget, which is a required component of your application (refer to “Attachment #6,” pages 21-22 of the RFA)
- “criteria for ranking properties applying for PDR” = the RFA does not require the submission of this information as part of your application to be submitted to the Department
- “administrative MOU drafted” = *only if two municipalities are applying jointly* would an MOU be required; however, said MOU must be *fully executed* – a “draft” version would not be acceptable (refer to the top of page 13 of the RFA)

30.Q: Must the audit of municipal laws be done in response to the RFA or can we use an audit done several years ago?

A: Provided the identified issues pertain to the municipality's existing local laws, any audit of those municipal laws that identifies unreasonable restrictions on Farm Operations and agricultural lands will be acceptable, regardless of when the audit was completed so long as the audit is submitted in the application.

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