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"Honoring our past, sustaining our future, where Skagit farms are the pride of the community."

September 22, 2006

USDA-NRCS
Easement Program Division
1400 Independence Avenue SW
Room 6819-S
Washington, DC 20250-1400
ATTN: Robert Glennon

RE: 7 CFR Part 1491 Farm & Ranch Lands Protection Program Interim Final Rule

Dear Mr. Glennon:

On behalf of the Skagit County Farmland Legacy Program and the Conservation Futures Advisory Committee (CFAC), a stakeholder committee established by the Board of Skagit County Commissioners to oversee that program, I would like to thank you for the opportunity to comment on the Interim Final Rule for the Farm & Ranchland Protection Program.

We are very concerned by this latest rule change proposed by USDA-NRCS. The Farm & Ranch Lands Protection Program has been altered significantly over the past five years, and these latest changes will make it nearly impossible for our program to take advantage of the USDA program. The challenges presented by this rule change are multiple and affect both the Skagit County program's ability to function efficiently and the willingness of landowners to participate in the program:

Subpart A – General Provisions
Real Property Interest of the United States

This is the most significant issue for the Skagit County Farmland Legacy Program, as it will negatively impact our ability to enroll properties in the program. The reaction to this element of the rule change from our agricultural community has been consistently negative. Many landowners are already uncomfortable accepting federal dollars; to explicitly state USDA's "command and control" attitude with regard to easements does nothing beyond deter participation in the program. As a governmental agency, the Skagit County Farmland Legacy Program already has significant oversight and "safety valves" to ensure our adequate stewardship of the easement and finances, and landowners are comfortable working with USDA's local partner.

We would contend that the agreement with the Commodity Credit Corporation should serve as adequate measure of USDA's clear interest, particularly when paired with the "contingent right" clause and notice requirements. The amendment of the language, ostensibly to clarify

USDA's right, is redundant and unnecessary; USDA already requires a title report following easement encumbrance to guarantee that the United States appears in the chain of title. Its interest is also recorded when the easement is recorded.

Concerns have also arisen about the consideration of a conservation easement template addendum. Currently, all programs must have a "standard deed of conservation easement" reviewed and approved by USDA, which then must be reviewed and approved again after the deed has been tailored to the specific property and landowner. To require an additional document not only is redundant, it indicates an intention by USDA to dictate all terms of the easement to the landowner and local implementing entity. Local standards and requirements will no longer have any standing as USDA applies a "one-size-fits-all" template to properties regardless of their individual qualities.

Title Review

As discussed above, we are concerned about the redundancy and rapidly expanding bureaucratic process engendered by additional title review and new related requirements. While our NRCS State Conservationist and Assistant State Conservationist are committed individuals who strive to provide us with timely review and feedback, given the track record of the agency as a whole with regard to title, easement, cooperative agreement, and other grant-related reviews due to staff and time limitations, we are skeptical about the ability of USDA to review and return title to the local partner in a timely manner. USDA already presumably reviews title when it receives the appraisal, which always includes the full title report, and again when it reviews easements prior to encumbrance.

Exercising the United States' Rights

The agency has never had to exercise its enforcement rights or take title to any FRPP-funded easement; however, the rule change cites a need "to set forth a uniform, predictable process" in the event that it must exercise its rights. This is another redundancy: USDA has already identified its rights and processes thereof both in the easement document and cooperative agreement. The "uniform, predictable process" already exists.

We are very concerned about the non-compliance clause proposed by USDA. A timeline of sixty (60) days to "cure" non-compliance is both unrealistic and arbitrary. Under the previous rules, USDA approved our standard deed of easement, which states that the landowner must cure or **begin** curing any non-compliance within thirty (30) days of receipt of a notice of violation. This suggests an understanding that not all incidences of non-compliance can be cured within thirty or even sixty days of notice. This heavy handed amendment marginalizes, if not eliminates altogether, the local partner's role in addressing non-compliance and working with landowners to correct violations.

Appraisal

We are concerned that USDA is confusing easement encumbrance and its interests therein with federal land acquisition resulting in fee simple ownership. The Uniform Standards of Professional Appraisal Practices (USPAP) or Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) should be adequate; we see no need for double certification. It is far more important to have an appraiser who is qualified to assess agricultural lands and their conservation values than it is to have multiple certification requirements. We are also concerned about "Supplemental Standards issued by NRCS." Upon what would those standards be based? We cannot provide information to our potential cooperators about standards that are not provided in advance. Again, a one-size-fits-all, top-down approach does not work given the variation in characteristics in individual farms, local partners, and state affiliates. Requiring one or the other of a methodology that has consistent requirements across the country is one thing; demanding "consistent valuations" is another thing entirely.

We are also concerned about the requirement for the properties to be, in essence, appraised multiple times. USDA does not reimburse the local partner for any appraisal, and has mandated that programs with proven points-based appraisal systems move to regular appraisals in order for funding to be provided. Since it is in USDA's interest for these appraisals to be conducted, it seems that USDA should be able to make at least a partial reimbursement to the local partner. The new additional requirement that the local partner have an appraisal in hand for each property that is dated the date of the cooperative agreement signing is completely unreasonable.

The period in 2006 between grant award notification and cooperative agreement signing was supposed to be thirty days – not thirty working days. The local partner, especially if it is a governmental agency, cannot move the contract that quickly through the process; part of that process now requires the additional appraisal or an appraisal update with the agreement signing date. Competent appraisers are always extremely busy, and are not available to appraise a property in such a short time frame. Additionally, a competent appraiser requires a certain amount of time to draft his report, follow up on relevant value questions, and check his work to ensure accuracy.

Impervious Surface Limitations

We are pleased to see USDA provide an allowance for the discretion of the State Conservationist in the matter of impervious surface limitations, and also to see that maximum allowance set at 6%. However, we are concerned that the farm must meet all three of the following criteria: 1) located in a densely populated area, 2) contain a large amount of open prime and important soil, and 3) farm must be less than 50 acres in size for the impervious surface waiver to be utilized. Requiring one or more of these criteria to be met is not unreasonable; however, requiring all

three will disqualify immediately many operations from participation in the program.

USDA does not define here what it means by "densely populated area"; further explanation is necessary. Requiring a farm to be in a "densely populated area" in order to qualify for the impervious surface waiver very nearly concedes that the farm has been, or will be, lost to agri-tourism. It also offers an implicit statement that prospective farm participants in less densely populated areas that require greater infrastructure have less value to what USDA claims is a "soils-based" program than the small, non-viable farm - even though the farm in the less densely populated area likely has a much larger area of prime soils.

For example, this amendment would eliminate our dairy farms from participation in this program by disallowing a waiver for farms over 50 acres. Dairies that have a grazing program or grow their own feed will not, under the proposed rule, be able to participate because they will be well over 50 acres. USDA is actively discouraging participation from dairy farms and other infrastructure-dependent operations, inadvertently eroding the agricultural land base that might otherwise be stabilized by this program. While small farms may be essential, this program should not discriminate against larger farms, which are necessary to prevent the decrease of the overall agricultural land (and soils) base.

Thank you for the opportunity to comment on the Interim Final Rule proposed by USDA for the Farm & Ranch Lands Protection Program. We appreciate your attention to our comments.

Sincerely,

Allison Deets
Director
Skagit County Farmland Legacy Program