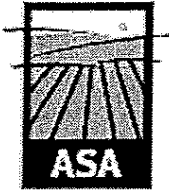


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**Agricultural Stewardship Association**

*Conserving Farmland*

September 22, 2006

Robert Glennon, Farm and Ranchland Protection Program Manager  
Easement Program Division  
Natural Resources Conservation Service  
1400 Independence Avenue, SW Room 6819-S  
Washington, DC 20250-1400

RE: Comment on the INTERIM FINAL Rule for FRPP

Dear Mr. Glennon:

I am writing in response to the Interim Final Rule for the Farm and Ranch Lands Protection Program (FRPP) published in the Federal Register on July 27, 2006 by the Commodity Credit Corporation.

The Agricultural Stewardship Association (ASA) is a nonprofit land trust established in 1990 by farmers and conservationists to protect land for agricultural use in the Washington County area of upstate New York. To date, we have protected over 5,550 acres of farmland through conservation easements.

In recent years, FRPP funding has been essential to our efforts to protect farmland by providing the match for the New York State Farmland Protection Program funds. Over the last four years, ten of our farm projects containing 1,994 acres of farmland have received FRPP funding. We have worked closely with NRCS, state and local governments and farmers on implementing these important farmland protection projects.

ASA is concerned that the proposed changes to the FRPP will prevent rather than assist the program in achieving its goal of protecting farmland. Specifically, a number of the proposed changes to the FRPP conflict with the standards of the New York State program. In the latest round of funding, New York State would not permit the use of FRPP funds as a match for state funded projects, largely due to the new FRPP standards. Our inability to combine funding sources will only serve to discourage farmer participation in selling conservation easements, since FRPP is one of our only sources of matching funds.

Please consider our comments below as you develop the final rule for the FRPP.

**Eligibility of Forest Lands** – Many producers in New York State grow and manage sugarbush in addition to traditional crops and livestock. We believe that the NRCS should allow for larger amounts of sugarbush acreage when it calculates percentage of forested acreage in New York State, where the agricultural use assessment program has determined that sugarbush is considered an agricultural use. We also recommend that the Agency implement the percentage of forest land limitations as proposed in §1491.3 and not place payment limitations on forested acreage.

**Real Property Interest of the United States** – We are concerned with NRCS being named as co-grantee rather than maintain the current “contingent rights” provision. We believe that this change will “alter the fundamental relationship NRCS has had with its partners” and have a strong reaction from the agricultural community over the United States being named as a co-grantee in the FRPP easement. We strongly recommend that the Agency maintain the current “contingent rights” provision.

**Exercising the United States’ Rights** – The 60-day period proposed by the Agency is not a sufficient amount of time to address all types of noncompliance. We recommend that the NRCS require that a grantee or partner demonstrate that it has taken steps to address the noncompliance issue within the 60-day period even if it takes the landowner additional time to cure the violation. We also recommend that the Agency provide guidance for how enforcement disputes between the multiple easement holders will impact a landowner who has complied with the policies and decisions of the easement holder with primary stewardship responsibilities.

**Appraisal** – We strongly oppose the proposal to require cooperating entities to conform to both the Uniform Standards of Professional Appraisal Practices (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book) when conducting appraisals. We believe that this proposal places an excess financial burden on cooperating entities, lengthens an already cumbersome application process and is not required by federal statute. We recommend that the Agency continue to allow FRPP partners to use either the USPAP or the Yellow Book when conducting appraisals.

**Impervious Surface Limitations** – We strongly oppose the proposal to limit the amount of impervious surfaces allowed on a FRPP easement to 2 percent. This rule fails to recognize the regional differences in agriculture by adopting a one-size-fits-all approach that is disadvantageous to farms in the northeast. We believe that this requirement, even with a waiver that allows up to 6 percent impervious surfaces, will have a negative impact on the program and result in the loss of valuable farmland.

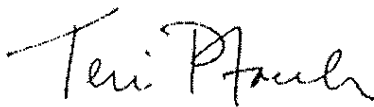
We believe that the 2 percent impervious surface restriction is not an appropriate method for meeting the Agency goal of “protecting topsoil by limiting nonagricultural uses of the land.” The proposed 2 percent standard would limit all uses of the land, agricultural or otherwise, that impact the topsoil. It would also place an additional burden on FRPP applicants and participants by requiring farmers and easement holders to determine the existing percentage of impervious surfaces, the percentage of impervious surfaces attributable to NRCS approved conservation practices and the extent of the additional impervious surface coverage that is being considered by owner.

We believe that the NRCS should grant the authority to the State Conservationist and State Technical Committees to develop impervious surface limits appropriate for agriculture in that state.

**Indemnification** - ASA opposes the indemnification language proposed by the NRCS. We believe that the proposed indemnification language is unnecessary since case law to date has held that easement holders do not qualify as "owners or operators" under CERCLA. As an easement holder, the United States would not be held liable for cleanup costs arising as a result of the presence of hazardous waste or other materials on an easement-protected property.

If the NRCS believes that language is needed to indemnify and hold harmless the United States, then we recommend that the amount of such an indemnity be capped at a dollar amount equal to the amount of the NRCS's financial contribution toward the purchase price for the easement, rather than having the potential liability of the party providing the indemnity be unlimited

Sincerely,



Teri Ptacek  
Executive Director

CC. U.S. Senator Hillary Clinton  
U.S. Senator Charles Schumer  
U.S. Congressman John Sweeney  
Ron Alvarado, NRCS-NY State Conservationist  
Marilyn Stephenson, NRCS-NY Program Manager  
Patrick Brennan, Commissioner NYSDAM  
David Haight American Farmland Trust