

Received 9/25/06
RJR

Glennon, Robert - Washington, DC

From: Scott Wilber [scottwilber@nmlandconservancy.org]
 Sent: Monday, September 25, 2006 1:31 PM
 To: Glennon, Robert - Washington, DC
 Cc: ski1071607@aol.com; 'Cyndie Tidwell'; 'Sayre Gerhart'; Fiedler, Seth - Albuquerque, NM
 Subject: FW: Comment Period for FRPP Interim final Rule
 Attachments: FRPPRuleFederalRegister072706.pdf

Hi Robert,

Seth Fiedler was kind enough to remind me that today is the last day to comment on the new Farm and Ranchland Protection Program (FRPP) Rules and Regulations. I have reviewed the new Rules and Regulations and my only comment has to do with the timing of the appraisal. In the section on Appraisal, I did not see anything regarding the timing of the appraisal. As you recall, when we were in the process of signing the new cooperative agreement for our project in Corrales, New Mexico, I expressed concern over the new provision in Section IV that "the appraisal must have an effective date that is the date on which this cooperative agreement is signed." My original comments to you regarding this issue were as follows:

I am writing you regarding our concerns about the requirement that the appraisal must have an effective date that is the date on which this cooperative agreement is signed in Section IV of the FY2006 Cooperative Agreement (see below). This requirement would significantly undermine our ability, and that of any applicant to the Farm and Ranchland Protection Program, to negotiate the purchase of conservation easements from landowners because it could significantly lower the amount that could ultimately be paid to a landowner for their easement. The purchase price would be limited to the fair market value at the date the cooperative agreement is signed rather than allow for the potential appreciation in easement value that would likely occur between the date of the signing of the cooperative agreement and the date that the conservation easement is actually completed. The cooperative agreement currently gives the applicant two years to complete the proposed conservation easement transaction and it is likely that the easement's value would increase considerably between the effective and expiration dates of the cooperative agreement.

The other problem with this rule is that it contradicts the general appraisal rules of the Uniform Appraisal Standards for Federal Land Acquisitions (the 'Yellow Book'), which is the appraisal standard, in addition to the Uniform Standards of Professional Appraisal Practice, that the cooperative agreement specifies that the appraiser must now apply. In Section B - Legal Basis for Appraisal Standards for Federal Land Acquisitions, subsection B-2 (Market Value Criterion) states: "As a general rule, the property being acquired should be valued as of the time of acquisition, or as near that time as possible." And in Section D - Standards for Unique and Miscellaneous Appraisal Problems, subsection D-13 (Updating Appraisal Reports) states: "When an appraisal has been made any substantial period in advance of acquisition, the appraisal must be carefully reviewed and brought up to date to reflect current market conditions. Any change in the value estimate attributable to trending or updating should be fully supported by acceptable market evidence. There can be no hard fast rule as to how often an appraisal report requires updating. While various government agencies recognize some rules of thumb in this regard (every 6 months, every 12 months), the frequency of updating will depend on the type of property involved, its location and the market conditions in the property's market area. For this reason, when approving an appraisal report, the review appraiser assigns a life to the approval, at the end

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of which the appraisal must be reviewed for updating.”

Another serious problem with this requirement is that, in most cases, participating landowners are being encouraged to sell their proposed conservation easement below fair market value, in other words, to donate a portion of the conservation easement's value. In fact, FRPP currently allows for up to 25% of the easement's value to be counted as match toward the 50% federal contribution toward the purchase price. Because non-federal cash match is so difficult to come by, most applicants to FRPP take advantage of the fact that 25% of the easement's value can be used as match to make their respective deals work. Also, given that in most cases landowners are not being paid 100% of the value of their easement, the potential tax deductions associated with those donations of easement value by the landowner are significant in helping landowners offset their federal and state tax liabilities (most importantly, the tax deductions can be used to offset the capital gains incurred from the sale of the easement). In order to qualify a landowner for these federal and state tax deductions, the donation of easement value must fulfill certain requirements set forth by the U.S. Treasury and the federal tax code. The Internal Revenue Service has specific requirements for determining and reporting the value of conservation easement donations (Treas. Reg. 1.170A-14 [h][3]). The value substantiation requirements for charitable gifts of property (including easements) in excess of \$5,000 (Treas. Reg. 1.170A-13) are as follows: The donor must obtain a written qualified appraisal. The Treasury regulations outline two rules about the timing of the appraisal. First, the appraisal cannot be completed earlier than 60 days before the date the easement is completed. If more than 60 days has elapsed between the date of valuation and the completion of the conservation easement, the appraiser must update the original appraisal. Second, the appraisal can be completed after the date the easement is completed; in this case the written appraisal report and the appraisal summary must be received by the donor on or before the due date of the tax return on which the deduction is claimed. New Mexico also has a state tax credit for donations of land/easement value. In order to qualify a landowner for this tax credit, an easement donation must follow the federal Treasury/IRS regulations, including the requirement that the appraisal be completed no sooner than 60 days prior to completion of the easement.

Since this requirement does not now appear in the new FRPP Rules and Regulations, are we (as participating entities) to assume that, as long as we meet NRCS' review and approval requirements, we can now obtain appraisals prior to completing our easements rather than require our appraisers to limit their estimates of value to the values of the easements at the time when the cooperative agreements were signed. And if this is now the case, my question is - can the cooperative agreements be amended to allow for this change in the timing of the appraisals? This is a very important issue for all of us in the land trust community because the timing of the appraisal is particularly important for those landowners seeking a federal tax deduction or a state tax credit for any portion of the easement's value that they are donating.

For the reasons given above, I would like to request that the requirement that *the appraisal must have an effective date that is the date on which this cooperative agreement is signed* be eliminated altogether from all current and future cooperative agreements. It has always been standard policy for government agencies to pay fair market value at the time a real estate transaction is completed - I don't think that this policy should be arbitrarily changed now. In the Rules and Regulations for FRPP, NRCS has already imposed the higher UASFLA appraisal standard. Combined with your required appraisal review and approval process, this should be sufficient to ensure NRCS that it will be paying no more than fair market value for the easements acquired through this program.

I appreciate the opportunity to make my case regarding this issue. I will look forward to your response. Thank you.

9/25/2006

Sincerely,

Scott Wilber

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-----Original Message-----

From: Fiedler, Seth - Albuquerque, NM [mailto:Seth.Fiedler@nm.usda.gov]
Sent: Monday, September 25, 2006 9:02 AM
To: Ben Brown; Ben Way; Canyon Preservation Trust; Claudia "Taudy" Smith; Corrales FPG Wayne Kirkby; Environmental Trust; Ernie Attencio; Jenny Parks; Jim McCord; John Tunberg; Karyn Stockdale; kevin bixby; Michael Patrick; riobirds@zianet.com; NM Nature Conservancy; Reid Haughey; Sayre Gerhart; Scott Wilber; Sid & Cheryl Goodloe; Steve Loring; Sue Macy; Tanya Taos Land Trust; Vigil, Norman - Albuquerque, NM
Subject: FW: Comment Period for FRPP Interim final Rule

Hello,

Just a reminder. The comment period on the FRPP interim final rule ends Monday, September 25.

Seth Fiedler
USDA NRCS
(505) 761-4416

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