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FRPP - IFR - NY SDAM



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September 25, 2006

Easement Program Division  
USDA-Natural Resources Conservation Service  
1400 Independence Avenue, SW  
Room 6819-S  
Washington, D.C. 20250-1400

Gentlemen:

Thank you for providing the opportunity to comment on the proposed Interim Final Rule for implementing the Farm and Ranch Lands Protection Program (FRPP). As you know, farmland protection is an issue of great importance in New York State and to the Department of Agriculture and Markets (the Department). We believe it is essential to have a continuing Federal presence and federal source of financial assistance to enable and accelerate the efforts of local governments across New York to protect viable agricultural lands. Accordingly, we believe it is vitally important that the FRPP continue to offer financial assistance for farmland protection implementation projects. However, the Department is very concerned about the fundamental orientation of the FRPP.

The Department strongly believes that the FRPP should be "protecting topsoil" through the protection of viable agricultural lands for farming and ranching. It has been our experience that protecting viable agricultural land from nonagricultural development also encompasses the protection of productive soils. But the protection of productive soils should not occur at the expense of limiting opportunities to expand or even change the enterprise of any given farm or ranch operation. This distinction is the root of our Department's concerns with the FRPP.

The Department believes that the FRPP has become unduly restrictive to present and future landowners who may wish to expand or even diversify their farm operations, either of which may necessarily require additional buildings. For example, the impervious surfaces limit proposed in the Interim Final Rule would likely and arbitrarily prohibit the addition of needed infrastructure to ensure the economic viability of farm operations. Specifically, the FRPP limits impervious surfaces across the entire easement area of the farm to 2%, but may allow a case-by-case exemption to a landowner to no more than 6% across the entire easement area.

By contrast, the Department employs the following policy with regard to impervious surfaces:

- > Without permission of easement holder, no limit on impervious surfaces within farmstead complex portion of easement area.
- > Without permission of easement holder, up to 5% impervious surfaces are allowed within farm area portion of easement area (i.e., that portion of the easement area outside of farmstead complex).
- > Only with permission of easement holder, up to an additional 5% impervious surfaces may be allowed within farm area portion of easement area.

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- Coverage limitations do not apply to:
1. Permeable surfaces such as gravel roads and parking areas,
  2. Structures that protect soil and water resources (such as manure storage areas), and
  3. Structures and improvements lacking permanent foundations where the land underneath is not covered by impervious surfaces.

Absent an overall impervious surface policy change that reflects New York's orientation of ensuring the economic viability of farm operations, the Department recommends the establishment of a waiver to legitimate state programs that demonstrate effective protection of viable agricultural lands.

In addition, the FRPP proposes to relax the limit on "forest lands incidental to the farm operation." The proposed revision (from 50% to 66 2/3%) regarding the acceptable extent of woodland acres, within the easement area seems to go significantly beyond "incidental to the farm operation." Properties containing more than 50% woodland are suspect as to their long-term viability as farm operations. With as little as 1/3 of the easement area being available for the production of crops and/or livestock, we again believe that this aspect may also undermine USDA's public policy of protecting farmland.

The Department is very concerned about the additional administrative requirements that are contained in the proposed rule. These include:

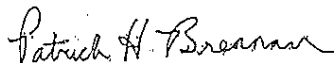
- (1) Recharacterizing "contingent right" to include USDA as a grantee to each conservation easement,
- (2) Title review conducted by Office of General Counsel for each conservation easement,
- (3) Appraisals to comply with both Uniform Standards of Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) as well as any Supplemental Standards issued by NRCS, and
- (4) Expanded indemnification and landowner certification of compliance with all laws associated with the subject property.

Each of these new or substantively revised requirements will add substantial costs and significantly extend the time needed to complete these already complex transactions. It is noteworthy that all of these requirements are directly and simply an outgrowth of the Federal Government acquiring an interest in each conservation easement funded by the FRPP. Contrastingly, each of these requirements would arguably disappear if there were no such interest being acquired. In other words, none of this would be necessary if the FRPP simply granted financial assistance to those entities actually proposing and acquiring each of these farmland protection projects. This approach is how our Department's Farmland Protection Implementation Grants program operates and this same approach is how the FRPP can best protect topsoil in New York State.

Finally, I call your attention to comments submitted by the American Farmland Trust (AFT). The Department shares AFT's views and arguments concerning the Interim Final Rule and encourages NRCS to incorporate the recommended changes within the FRPP.

Thank you again for the opportunity to provide these comments. Please do not hesitate to contact David Behm (the Department's Farmland Protection Program Manager) at 518-457-2713.

Sincerely,



Patrick H. Brennan  
Commissioner