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STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
OFFICE OF THE COMMISSIONER  
28 STATE HOUSE STATION  
AUGUSTIA, MAINE 04333-0028

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September 25, 2006

Easement Program Division c/o/ Robert Glennon  
Natural Resources Conservation Service  
1400 Independence Avenue, SW  
Room 6819-S  
Washington, DC 20250-1400

COMMENT ON THE INTERIM FINAL RULE FOR THE FARM AND RANCH LANDS  
PROTECTION PROGRAM

Please find below the comments of the Maine Department of Agriculture, Food and Rural Resources and five partner organizations, including the Androscoggin Land Trust, Freeport Conservation Trust, Great Works Regional Land Trust, Maine Farmland Trust and Sheepscot Valley Conservation Trust. Since 2000, we have been coordinating our efforts to develop policy and raise funds to protect farmland in Maine

In comparison to other states like California, Maryland and New York, Maine's farmland protection program is somewhere between its infancy and the "terrible twos." We know how and where and why and, in terms of this interim final rule we struggled mostly with asking ourselves "why not?" Since 2000, through the Land for Maine's Future Program, the State has invested \$5 million dollars and leveraged an additional \$6.5 million in federal and private/local funds to protect 8,000 acres of farmland (Please note that another 2,000 acres are funded and pending protection by then end of 2007). Our success is the product collaboration, cooperation and coordination with many more partners, including, our "pioneer" agricultural conservation easement grantors and holders, and the Land for Maine's Future Board, the Trust for Public Land, The Nature Conservancy, the New England Forestry Foundation, American Farmland Trust and the United States of America through FRPP.

We have reflected on our past experiences, and more recent challenges of reconfiguring new and current projects to conform to the proposed rules, to offer the following comments. We hope that you will count each comment as if it were coming from six individual entities

**General Comments**

The interim final rule will limit, rather than expand future opportunities for farmland protection in Maine. This is because the rule aims to be one-size-fits-all rather than accommodate the unique differences in topography, climate, soil, water and other important natural resources that make agriculture economically viable in Maine. Here, agriculture is still one of the primary forms of wealth creation and economic development because it is so diverse. This powerful business sector includes: dairy, brown eggs, livestock and poultry, aquaculture, wild blueberries, maple syrup, small fruits and

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vegetables, apples, cranberries, horticulture nurseries and Christmas trees. While some of these types, like aquaculture, might not be eligible for FRPP funds because of the very nature of the operation, the proposed rule tends to eliminate diversified operations which rely on a mix of land types and land cover to generate the annual farm income. It seems that crops that are valid agricultural crops on the IRS Schedule F should at least qualify land to be counted as agricultural land in this program? Please see specific comments for 1491.4(d)(4) below

The interim final rule makes the entire transaction more complex. New additional technical and administrative reviews of title and appraisal by the federal partner repeat steps that have been taken by other trained and equally responsible partners who are bound by the same state and federal laws pertaining to conservation easements and required due diligence. These new additional steps make our landowners increasingly wary and our partners anxious. Each group has expressed concerns about the additional time that will be needed to complete a project, as well as the potential for differences in understanding of the lay of the land and interpretation of definitions.

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Specific Comments

1491.2 – Definition of Fair Market Value

Support change. Maine farmland appraisals have always accounted for enhancement values.

1491.4 (d)(4) – Eligibility of Forest Lands

Do not support this change. While this change is seen as a concession to the Northeast, it adds unnecessary steps to a project's design and transaction costs. It unnecessarily adds complications to separate out the value between the federally funded 1/3<sup>rd</sup> farmland and equal 1/3<sup>rd</sup> woodland and the remaining 1/3<sup>rd</sup> woodland portion of property, and then it asks the landowners to give equal rights on all three thirds of the Protected Property. This raises the question of whether the boundary line between the 2/3<sup>rd</sup> farmland/woodland and the remaining 1/3<sup>rd</sup> woodland ought to be surveyed so as to protect Grantors and Holders should a violation occur on the portion of the land that FRPP did not officially "pay for." Historically, the USDA Ag Census has always counted woodland as part of the farm and part of the annual farm income. Maine NRCS Conservation Plans include woodlands as part of the farm operation. This new rule flies in the face of this understanding; therefore Maine encourages the NRCS to go back to the less complex and convoluted eligibility requirement that a property simply have 50% agricultural soils. That criterion is easy and straightforward and it doesn't create a new set of problems as far as different levels of funder's participation in different land types within the protected property.

Real Property Interest – Do not support OGC interpretation of "ownership."

Attorneys and farmland protection project managers continue to be concerned about the expanding federal view that it is purchasing an interest in property, rather than investing in the protection of that property's agricultural productivity. The view is leading the NRCS away from its great legacy of voluntary conservation incentive programs towards regulatory enforcement of "its real estate." Thus far the OGC has allowed Maine's Contingent Right language to create a hierarchy that has established the

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State of Maine as a the first-in-line Third Party ahead of the United States. Maine would like to retain that interpretation. This role of the United States is more onerous to the grantors who believe that giving the easement in exchange for a one-time value of development rights is a fair and equitable deal. These grantors currently understand that one holder is the steward of the easement and they are the stewards of the land. They understand the State and the United States are "back-up holders" only. It seems if FRPP is going to work well, the NRCS needs to look at alternative interpretations of investment and ownership as applied to other federal conservation programs, such as the Forest Legacy Program and the Landowner Incentive Program. These programs provide grants for acquisition, transaction and stewardship costs and provide some limited support as a "backstop" for enforcement.

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Title Review – Partial support. We support the change allowing FRPP to reimbursement for portion of title insurance, but we are wary about time, extra staff and extra confusion that will be involved in multiple entities reviewing the title work. We object to the additional technical and administrative reviews as they will repeat the work that trained competent professionals are already doing.

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Exercising United States' Rights – Support with conditions. Maine is very anxious about the provisions in the easement and the processes that will be involved in asserting the federal rights of "ownership"

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Appraisal – Partial support. Except for requiring evidence of an appraiser's certification of training in UASFLA, the State of Maine has been requiring appraisals that meet the UASFLA standards

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Again, we object to the additional technical and administrative reviews as they will repeat the work that trained competent professionals are already doing.

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Impervious Surface Limitations – Support the waiver and sliding scale from 2-6%, but stand with other states like New York and California that foresee how this limit will seriously impact future agricultural productivity and viability.

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Indemnification - Support with conditions. Maine struggled with this requirement in 2004. We agree as long as the Federal right doesn't interrupt or frustrate the Holder's or State Third Party's right to cure ahead of the Federal Grantee

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We thank you for your attention, please feel free to contact me at 207-287-7520 should you desire any clarification or have any follow-up questions

Respectfully,  
 Stephanie R. Gilbert  
 Farmland Protection Specialist

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