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September 25, 2006

Mr. Robert Glennon  
Farm and Ranch Lands Protection Program Manager  
Easement Program Division, NRCS  
1400 Independence Avenue, SW - Rm 6819-S  
Washington, DC 20250-1400

Dear Mr. Glennon:

Thank you for the opportunity to comment on the Interim Rule implementing the Farm and Ranch Lands Protection Program, published in the Federal Register on July 27, 2006. The Nature Conservancy is pleased to offer its support for the agency's effort, but suggest some targeted changes to the proposed directive.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground conservation work is carried out in all 50 states and in 31 foreign countries and supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada by working in partnership with private landowners, businesses, like-minded organizations and state and federal government agencies.

The Conservancy works closely with the Natural Resources Conservation Service (NRCS) across the country to implement conservation programs and has been involved with several FRPP projects. We have comments on the following sections of the FRPP Interim Final Rule:

#### **Definition of Fair Market Value**

The changes to the definition of fair market value are logical and consistent with established guidelines and practices for appraising easements. The changes are necessary to accurately value and validate future easements. Conservation easements are one of the most powerful and effective tools available for the permanent conservation of private lands in the United States. The use of conservation easements has successfully protected millions of acres of wildlife habitat and open space, keeping land in private hands and generating significant public benefits. It is for

these reasons that we support this change to further validate and strengthen the fair market value of FRPP easements.

### **Eligibility of Forest Lands**

The Nature Conservancy strongly supports the changes made in the Interim Final Rule regarding the eligibility of forestland. The justification NRCS provided for the change accurately captures the situation on the ground, and the proposed solutions will help to protect additional farmland. Of the 1.9 billion acres in the contiguous 48 states, forestlands account for roughly 405 million acres. Nearly three-quarters of these forest lands consist of privately-owned forests managed by individual landowners, representing a significant portion of the rural land base.

Many landowners, who own and manage crop lands and rangelands, also own and manage forest lands. Rather than being incidental to their operations, these forestlands provide important benefits, including the protection of water supplies and steep slopes, while also offering a source of supplemental income from periodic timber sales. There have been long-term disturbances of our floodplain forests, particularly along the Mississippi River, and protection of these forestlands can improve the ability of stream systems to assimilate pollutants. The loss of these forests result in a downward spiral in water and habitat quality. Impacts begin in the smallest headwater streams and accumulate downstream, affecting floodplains and, ultimately, the Mississippi River Delta and northern Gulf of Mexico. Creating an artificial separation of farm and forestland, is counter-productive to the program's overarching goal of protecting intact tracts of viable and productive working lands in the context of robust and diverse rural economies.

### **Impervious Surface Limitations**

The issue of impervious surface limitations is complex. On the one hand, and as NRCS states in its explanation of the rule change, in addition to converting agricultural soils to more intensive land use, increases in impervious surface cover have caused negative effects on ground water recharge, water quality, and changes in hydrology that result in downstream flooding. Studies show that there is also a direct relationship between amount of impervious surfaces and the extent of degradation of freshwater and marine systems. As such, it is clearly in the interests of this program to provide for strict limits on the amount of impervious surface allowed on property enrolled.

We also recognize that easements and the properties they protect are, by nature, diverse and resist a "one-size-fits-all" approach to restrictions and allowances. There may be properties important to protect under this program that require a slightly higher percentage of impervious

surfaces to facilitate the particular nature of their agricultural operation. As such, having a well-designed and thoughtful waiver provision at the state-level is advisable.

While The Nature Conservancy commends NRCS for trying to strike an appropriate balance between these two issues, we have some concerns with the proposed solution as outlined in the Interim Final Rule. Specifically, the interim final rule states:

*"Impervious surfaces shall not exceed two percent of the FRPP easement area. However, the NRCS State Conservationist may waive the two percent impervious surface limitation on a parcel-by-parcel basis, provided no more than six percent of the easement area is covered by impervious surfaces. To waive this limitation, the NRCS State Conservationist must examine, at a minimum, population density, the ratio of open prime and important soil versus impervious surfaces on the easement area, and parcel size. All FRPP easements must contain language limiting the amount of impervious surfaces within the easement area."*

The Nature Conservancy is concerned that this proposed language allows the State Conservationist more latitude than the appropriately limited conditions referenced in the rationale for the change. Under existing guidelines, the model template allows for up to six percent impervious surfaces if properties are *"located in a densely populated area, contain a large amount of open prime and important soil, and are less than 50 acres in size."* The NRCS states that the existing policy has been successful in: *"limiting the geographic area where this waiver can occur, focusing on protecting farms that have a high ratio of protected open prime or important land versus covered lands; and ensuring that this waiver is instituted primarily for smaller, more intensive farms in specific geographic areas."* At the end of the explanation for the proposed change, however, NRCS states that *"the typical easement in the northeast is 100 acres which, under this policy, would provide up to 6 acres of impervious surface. Likewise, in the west, a 1000-acre easement could have up to 60 acres of impervious surface."* These examples appear to suggest that any property could potentially get a waiver on the impervious surface limit regardless of size. We would ask NRCS to reconsider allowing 60 acres of impervious surface on a previously intact 1000 acre ranch protected under this program. Such an allowance would run counter to the very intent of the program and the conditions NRCS has cited as the foundation for the successful and prudent use of the waiver under the previous rule.

To maintain flexibility but also protect soil and associated aquatic resources, the NRCS should amend the interim final rule to state that such a waiver could only be considered under the following conditions: that all waivers must be granted based on analysis of the parcel against

objective criteria developed in consultation with the State Technical Committee. The standards set forth for these objective criteria shall comply with minimum standards set forth by NRCS and shall include as the rules states: at a minimum, an examination of population density, the ratio of open prime and important soil versus impervious surfaces on the easement area, and parcel size. In no event would impervious surfaces exceed six percent of the easement area, and all FRPP easements must contain language limiting the amount of impervious surfaces within the easement area.

In addition to our comments on changes proposed by NRCS under the Interim Final Rule, The Nature Conservancy also recommends that the Department consider making the following additional changes and improvements to the program.

### **Matching Requirements**

In order to increase the number of protected acres, we encourage NRCS to amend the matching requirements for FRPP and provide additional flexibility to the participating entity and landowner. Landowners should be allowed to provide as much as half of the non-federal match. The current matching requirements for FRPP often present great challenges for state agencies, local land trusts, or other organizations seeking to implement FRPP projects.

We have found that the current requirements often force partner entities to contribute cash to the project, even when the landowner is willing to donate all the matching funds through a bargain sale. If the objectives of the matching requirement are to a) leverage the federal investment, and b) by doing so, protect more acres on the ground, these objectives could be more easily and successfully met by adhering to a single matching rule: "The NRCS contribution to the project shall not exceed 50 percent of the easement's fair market value. The entity must provide the balance from other, non-federal sources, including, without limitation, a bargain sale (*sale for less than fair market value*) by the landowner."

It is important to note that partner entities always contribute some cash to the purchase of an easement. These cash contributions include due diligence costs of appraisals, title work, and other related costs as well as staff time needed to complete the easement, and long-term monitoring and stewardship expenses, none of which is reimbursed under the program.

### **Protection of Existing Habitat and Allowance for Restoration**

NRCS should allow the easement to restrict more intensive agricultural uses, such as breaking sod to convert rangeland to cropland. In addition, we would like to see the program allow habitat restoration and protection and assign higher points or ranking to such projects. The

Nature Conservancy urges NRCS to clarify that Farm and Ranchland Protection Program easements can restrict or prohibit more intensive agricultural uses not existing on the property prior to the effective date of the easement and can explicitly protect wildlife habitat or other natural areas existing or restored on the property. Current NRCS guidance on this issue has been inconsistent, but in some cases NRCS has ruled that such restrictions or provisions are not allowed in a FRPP easement.

There are several justifications for allowing restrictions on certain types of agricultural uses or protecting existing or restored habitats. First, all FRPP easements are negotiated with willing landowners. The rancher, farmer or forest owner would have to agree to any and all restrictions. Second, the restrictions would not eliminate existing agricultural uses; they would merely ensure future uses were consistent with the permanent and linked protection of the property's agricultural and environmental resources. Third, increasingly intensive agricultural land uses pose a large threat to many declining habitats across the United States, most notably on the Great Plains. Conversion of native prairie and rangeland (here after referred to collectively as grasslands) to cropland is a key concern of The Nature Conservancy and other conservation organizations and agencies. Temperate grasslands are the least protected, and perhaps more importantly, most altered major habitat type in the world. Federal agricultural policy and certain Farm Bill programs have contributed to the conversion of native grasslands to cropland. This phenomenon is most pronounced in the Great Plains region where over 8.4 million acres of native grassland were converted to cropland in nine states from 1982 to 1997. More than 90 percent – and as much as 99 percent in several Midwestern states – of native tallgrass prairie has already been lost. According to USDA reports, current annual rangeland loss in the 11 western states may be as high as 2-3 million acres, with another million acres lost every year in the Great Plains. This dramatic expansion of cropped acreage in the central part of the country has occurred despite generally low market prices, suggesting that farm policy is the single greatest driver in shaping producer decisions related to conversion of grassland to cropland. In addition to native grasslands on working farms and ranches, many agricultural properties contain excellent wildlife habitat and natural areas, including wetlands, riparian corridors, and forests. NRCS should support these habitats as part of the permanent conservation of the farm to demonstrate that agricultural operations and environmental protection are complimentary in an FRPP easement.

If, for example, The Nature Conservancy contributes to the purchase of an FRPP easement on a 2,000-acre tract of native grazing land in Nebraska, TNC must have legal assurances that the land will not be converted to tillage crop production. Similarly, if a local land trust in Georgia helps to purchase an FRPP easement on a grain and cattle farm, the trust needs the legal

assurance that future owners will not construct a large-scale feedlot operation on the property. Without these assurances, TNC and many other land trust organizations will be reluctant to contribute resources to FRPP easements, which will hinder the program's objectives of reducing conversion of agricultural soils to incompatible and inappropriate uses.

In conclusion, we believe the Farm and Ranch Land Protection Program provides a great opportunity to support state, local and private farm and ranch land protection efforts. This program not only protects agricultural land from residential and commercial development by acquiring agricultural conservation easements on productive farmland, it also encourages good stewardship of the land. We encourage USDA to address our concerns and suggested changes for the program so that the success and effectiveness of the program are maximized. Thank you again for the opportunity to comment. If you have any questions, please contact the following staff at The Nature Conservancy: Adrienne Wojciechowski at 703-841-5376.

Sincerely,



Jimmie R. Powell  
Director of Government Relations