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New Jersey Conservation Foundation
National Sustainable Agriculture Coalition
Association of New Jersey Environmental Commissions
Comeback Farm • Delaware Riverkeeper Network
The Land Conservancy of New Jersey • New Jersey Environmental Federation
New Jersey State Federation of Sportsmen's Clubs • Musconetcong Mountain Conservancy
American Littoral Society • Citizens for Resource Preservation
Wildflower Meadows Farm • New Jersey Highlands Coalition
South Jersey Land and Water Trust • Bethlehem Township Environmental Commission
Citizens United to Protect the Maurice River and its Tributaries, Inc.
Great Egg Harbor Watershed Association

August 3, 2009

John Glover, Acting Director
 Easements Programs Division
 Department of Agriculture
 Natural Resources Conservation Service
 Farm and Ranch Lands Program Comments
 PO 2890, Room 6819-S
 Washington, DC 20013
 Fax: 202-720-9689

Re: Rulemaking for Farm and Ranch Lands Protection Program
Docket Number NRCS-IFR-08013

Dear Mr. Glover:

We, the undersigned organizations, are writing regarding the re-opened interim final rule for the Farm and Ranch Lands Protection Program (FRPP). The Food, Conservation and Energy Act of 2008 changed the program significantly and we would like to register our concerns. While some of the changes are positive and allow more flexibility within the program, the removal of a specific reference to topsoil protection as a primary purpose of the program and the increased waiver allowing an impervious surface cover limitation up to 10% are of great concern to us.

Because we highly value topsoil and the agricultural production benefits and natural resource protections it provides, and because soil conservation is a key concern of NRCS, we urge that the maximum impervious cover limitation waiver be changed back to 6% to better protect soils. Given the option, many states will opt for the 10% waiver, which would encourage more permanent greenhouses, built ponds, lagoons and other infrastructure that irrevocably harm prime farmland. The best way to ensure that farms funded through FRPP are protected from this type of destruction is to set a federal standard of a 2-6% impervious surface limitation. We also urge NRCS to require that landowners demonstrate a documented need if requesting a waiver of the 2% limit, rather than allowing for blanket waivers.

Another provision in the Interim Final Rule (January 16, 2009) continues to be of concern. Section 1491.22 Conservation easement deeds. (i) states that "Impervious surfaces shall not exceed two percent of the FRPP easement area, excluding NRCS approved conservation practices." This appears to allow State Conservationists to exempt anything established under an NRCS conservation practice standard from inclusion in the impervious surface calculation - including confined animal feeding operation (CAFO)

waste lagoons or any paved surfaces allowed in conservation practice standards. We recommend the requirement that every NRCS conservation practice standard that results in impervious surface be reviewed for rejection or approval as part of the FRPP easement and be included in the estimation of impervious surface. We respectfully recommend further that FRPP easements not allow CAFO waste lagoons, concrete waste storage pads and other CAFO infrastructure to be excluded from the impervious surface calculation.

The revised purpose of the program is to protect the agricultural use "and related conservation values" of eligible land. We urge the agency to retain saving prime soils -- a precious resource -- as one of the critical related conservation values, consistent with the historic mission of the agency and the large taxpayer contribution to fulfilling that mission. By requiring FRPP to continue to protect topsoil, federal dollars will help to promote the total resource management system approach to conservation promoted by NRCS. The attached summary notes how this objective is beneficial to water quality and other NRCS concerns.

Topsoil protection in FRPP also complements topsoil protections within the Conservation Reserve Program, Conservation Stewardship Program and the Environmental Quality Incentive Program. Soil quality is a priority resource concern in these programs and as such should have strong protections across every Farm Bill conservation program. We hope NRCS will continue to use conservation program funding to reward the integrated farming and conservation systems that are most sustainable and that encourage long-term maximum natural resource and environmental benefits.

Thank you very much for your consideration of our comments. We have attached a summary that outlines the importance of an impervious cover limit within the Farm and Ranch Lands Protection Program. Please contact Alison Mitchell, Policy Director at New Jersey Conservation Foundation at 908-234-1225 if you have any questions or would like to talk with us about this important issue.

Sincerely,

Alison Mitchell, Policy Director, New Jersey Conservation Foundation
Ferd Hoefner, Policy Director, National Sustainable Agriculture Coalition
Fred Akers, River Administrator, Great Egg Harbor Watershed Association
Sandy Batty, Executive Director, Association of New Jersey Environmental Commissions
Matt Blake, Manager, Delaware Bay Program, American Littoral Society
Mark Canright, Comeback Farm, Asbury, NJ
Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network
Styra Eisinger, Agricultural Liaison, Bethlehem Township
David Epstein, President, The Land Conservancy of New Jersey
Jane Morton Galetto, President, Citizens United to Protect the Maurice River
Amy Goldsmith, State Director, New Jersey Environmental Federation
George P. Howard Jr., Conservation Director, New Jersey State Federation of Sportsmen's Clubs
Tom Koven, Co-President, Musconetcong Mountain Conservancy
Christine Nolan, Director, South Jersey Land and Water Trust
Joseph O'Grodnick, Coordinator, Citizens for Resource Conservation
Jean O'Grodnick, Wildflower Meadows Farm, Pittstown, NJ
Julia Somers, Executive Director, New Jersey Highlands Coalition
Eric Sween, Chair, Bethlehem Township Environmental Commission

Attachment: The Importance of Impervious Cover Limits

Flexibility for Agriculture and Soil Protection:

- Because so much of our productive soils and open farmland have already been lost to development, causing negative impacts to our natural resources, it is particularly important to protect what remains.

- Despite much progress made in erosion control, the loss of topsoil to erosion continues to be a problem in many parts of the country. Retaining the precious soil resources that remain is integral to the future of agriculture.

- Flexibility for agriculture in the future is protected by preserving soils. A limit on structures protects the public's interest in long-term food production and food security. Extensive impervious coverage on a farm limits future agricultural flexibility for a given property since it is not economically practical, and may not be scientifically possible, to return highly compacted soils to soil-dependent agricultural production. The consensus among soil scientists is that alleviating soil compaction is very difficult. Article 37, *Technical Note #108 from Watershed Protection Techniques. 1(4): 666-669* notes that, "once a soil is compacted, it is extremely difficult to restore its original structure, particularly if the compaction extends several feet below the surface."

Local Food Supply and Public Support for Natural Resource Protections:

- The population in the United States is increasingly concerned about expanding access to healthy, locally grown food, and clean and abundant drinking and surface water resources. The impervious cover limit within FRPP protects these critical natural resources.

- Public support for farmland preservation comes with an expectation that soils and other natural resources are being protected. Most farmland preservation program administrators recognize this, and repeatedly use the public's support for open space to market their farmland preservation programs.

- The public spends substantial amounts of tax dollars on farmland preservation in exchange for benefits including the environmental protections afforded by open land, the preservation of scenic views, and the protection of prime soils to meet a variety of agricultural needs in the future. The public purposes of the Farm and Ranch Lands Protection Program are supported by limiting the building coverage on preserved farms.

Impervious Surface Impact on Storm Water Runoff and Stream Health:

- According to the EPA Mid-Course Review Recommendations, "...a 1 - inch rainstorm over a 1 - acre area of natural grassland will typically produce 218 cubic feet of runoff. The same storm over a 1 - acre paved parking lot would produce 3,450 cubic feet of runoff, nearly 16 times more than the natural setting. Reduction of impervious surfaces is a key component of good environmental design. Studies have shown that there is an imperviousness threshold at which no Best Management Practice (BMP) can mitigate the additional pollutant load resulting from development."

- The Journal of the American Planning Association, *Impervious Surface Coverage, the Emergence of a Key Environmental Indicator (Arnold and Gibbons, 1996)* notes, "Impervious surfaces alter the natural hydrology, prevent infiltration of water into the ground, and concentrate the flow of storm water over the landscape. As the imperviousness of a watershed increases, the greater volume of storm water increases the possibility of flooding and reduces the potential for pollutants to settle out; meaning that more pollution is delivered to drinking water, streams and aquifers. Too much paving and hardening of a watershed can reduce infiltration and groundwater levels which in turn can decrease the availability for aquifers, streams and rivers for drinking water supplies."

Agriculture's Role in Mitigating Global Warming:

- A recent report by the Rodale Institute (*Regenerative Organic Farming: A Solution to Global Warming, 2008*) states, "Nearly 30 years of Rodale Institute soil carbon data show conclusively that improved global terrestrial stewardship—specifically including regenerative organic agricultural practices—can be the most effective currently available strategy for mitigating CO2 emissions." By supporting topsoil protection within FRPP going forward we will ensure that we have the topsoil necessary to sustain organic agriculture and the resulting carbon sequestration.

Tax Deductibility of Easements:

- Recently, questions have been raised about the validity of income tax deductions for easement donations where the easements do not restrict building coverage. Conservation easements must protect the open space character of a property in order to meet the IRS eligibility requirement for charitable deductions. Given that FRPP is oversubscribed for the limited public dollars available for preservation, it is important to encourage full or partial donations of easements.