

Decker, Denise - Washington, DC

From: Edgar Miller [edgar@ctnc.org]
Sent: Tuesday, March 17, 2009 4:53 PM
To: RA.dcwashing2.frpp
Cc: Walker, Greg - Raleigh, NC; Reid Wilson
Subject: Docket # NRCS-IFR-08006
Attachments: FRPPcommentsFinal3.17.09.doc

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Attached please find the comments of the Conservation Trust for North Carolina on the proposed interim final rule for the Farm and Ranch Land Protection Program. These comments are made on behalf of CTNC and NC's 24 local and regional land trusts.

Thank you for your consideration.

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Easement Program Division
Natural Resources Conservation Service
Farm and Ranch Land Protection Program Comments

Re: Docket Number NRCS IFR-08006

The Conservation Trust for North Carolina on behalf of itself and NC's 24 local and regional land trusts, appreciates the opportunity to comment on the proposed interim final rule (IFR) for the Farm and Ranch Land Protection Program (FRPP). Most of our comments are directed at issues that will make it easier for land trusts to participate in the program and will protect USDA's long term investment in these projects.

- 1) We feel very strongly that the federal government should retain its "contingent right of enforcement" to assist land trusts holding FRPP easements in defending those easements. The proposed IFR in Section 1491.22(d) states, "This right is a vested interest in real property and cannot be condemned by State or local government." While we welcome the language restricting the condemnation of these properties, we are concerned that this requirement will continue the practices, such as burdensome, and we feel in some cases, unnecessary, appraisal standards and reviews, title commitments, and other easement requirements, which have been an administrative burden on land trusts participating in the program. We hope the new language will honor Congressional direction for the program to "facilitate and provide funding" for the purchase of those easements, as opposed to federal government purchasing the easement and the attendant easement requirements.
- 2) While there is not consensus among NC land trusts about the impervious surface requirements/waivers procedures in Section 1491.22 (i), we generally support the limit of two percent and the need for some limited flexibility through the waiver process. In North Carolina, the Clean Water Management Trust Fund, which funds projects to protect water quality, limits the impervious surfaces on their projects to 10 percent, which many believe is too high, particularly in riparian areas. While we recognize there may be cases where the impervious surfaces associated with some agricultural operations may exceed two percent, particularly on smaller farms, typically NC land trusts have not used conservation easements to protect those types of operations.
- 3) Section 1491.4(f)(5) maintains the current eligibility limits on the percentage of easement land that may be forested and requires a management plan for forest land that exceeds the greater of 10 acres or 10 percent of the easement area. In North Carolina, to qualify for the present use value property tax program, which also requires a sound forest management plan, the landowner must have at least 20 acres under management and commercial production. We would recommend increasing the minimum acreage to trigger the requirement of a forest management plan to at least 20 acres to be consistent with this requirement and/or 50 percent of the easement area. We also support the allowance of forest

stewardship plans, which do not necessarily have a commercial harvesting component, especially as the rule notes to provide buffers to ensure the viability of the farm operation.

- 4) According to the IFR, Section 1491.30(d) clarifies that any cost recovery levied by NRCS will be directed to the participating entity, not the landowner, for costs associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement, including attorney's fees or expenses. If NRCS believes that the grantor has violated the easement, then NRCS should be obliged to pursue cost recovery directly from grantor without obligation from grantee. If USDA goes after grantee because they feel that grantee is violating its obligations, only then should they be allowed to seek cost recovery from the grantee.
- 5) We support the provisions in 1491.21(b) that reflect the statutory changes to the funding formula to establish the minimum entity cost share to be 25 percent of the acquisition "purchase price," which is defined as the fair market value of value of the easement less the landowner's contribution. Section 1491.21(c) authorizes landowner donations without restrictions. The previous rule limited landowner donations to 25 percent of the easement value, but this change will greatly assist land trusts in North Carolina working with landowners that want to make a sizeable donation, particularly since the state's matching funds for this program are limited.
- 6) Section 1491.4(g) requires the value of the conservation easement to be appraised. The appraisal must be completed and signed by a state-certified general appraiser and must conform w/ the Uniform Standards of Professional Appraisal Practices (USPAP) or the Uniform Appraisal Standards. Appraisals. The appraisal and title commitment must be submitted 90 days before closing. We think this is reasonable and provides additional flexibility. At least two land trusts in North Carolina have had matching funds jeopardized by unnecessary delays resulting from NRCS appraisal reviews, which we believe are not required by the statute and existing rules. These delays have made it very difficult to coordinate FRPP projects with state matching funds from the Clean Water Management Trust Fund, the Tobacco Trust Fund Commission and the Agricultural Development and Farmland Preservation Trust Fund. We would strongly recommend that these rules be in effect for any upcoming closings even that are under earlier Cooperative Agreements if they have not already been appraised.
- 7) Section 1491.22(c) allows the participating entity to use its own terms and conditions in the conservation easement deed, but an easement template must be submitted to the NRCS headquarters within 30 days of signing a cooperative agreement. We support this provision and hope that NRCS will allow adequate flexibility to accommodate project specific conditions and state-specific practices.

- 8) We are concerned that the national ranking criteria tend to favor larger farms and disadvantages farms in rapidly developing areas. We believe a balance is needed between the two and the national criteria should be reconsidered to provide a better balance between large and small farms and farms on the urban fringe facing significant development pressures.
- 9) Under the current proposal, we do not believe any eligible entities in North Carolina would qualify as certified entity. We encourage NRCS to continue to refine these criteria, but are concerned that all projects be compared nationally on the same basis to maintain the competitive nature of the program.

Thank you for the opportunity to comment on the proposed interim final rule. Please let us know if you have any questions about our comments.

Sincerely,

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