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To whom it may concern,

We are second year law year law students at Mercer University School of Law. We are interested in the proposed rule and would like to offer a comment. Our interest in this regulation stems from our general appreciation for nature and love of hiking. In our spare time we try to find new forests to hike through, marveling at the natural expanse and stability of trees. We love being surrounded by different forest tree species, as well as appreciating the general biodiversity found in a forest. The diverse bird species play a large role in a forest ecosystem. In a recent trip to the only U.S rainforest, in Puerto Rico, we were unable to witness any natural bird activity. We would love to be able to hike within Georgia's forests and observe diverse wildlife and plant species. Endangered species also require critical habitat within these forests. In particular, the preserved red-cockaded woodpecker thrives in living old growth longleaf pine forests, and other tree species are also acceptable habitats. We would like to see this Healthy Forests Reserve Program be used to maintain the trees as habitat for their native and endangered species, particularly the woodpecker.

We understand this regulation is trying restore and enhance forest ecosystems and promote the recovery of endangered and threatened species on private lands through easements. The proposed regulation also seeks to improve plant and animal biodiversity and enhance carbon sequestration on private lands through easements, contracts and cost share agreements. We further understand there has been a regional effort to preserve endangered species' habitat and in

order to ensure necessary protection of certain endangered species this protection should extend to private lands. In furtherance of these goals, we suggest a change to section 625.6 (a) of the proposed rule, which currently states, "NRCS... may consider the following factors to rank properties." Our change would require the consideration of the following factors, thereby changing "may" to "must." This change would further the objective of the proposed rule and promote the intent of Congress in the Endangered Species Act to provide endangered species the highest priority in the issuance of easements. *TVA v. Hill*, 437 U.S. 153 (1978) (holding that Congress intended endangered species to be afforded the highest of priorities and to halt and reverse the trend toward species extinction, whatever the cost, because the value of endangered species was "incalculable"). Without the mandatory language, the proposed rule as stated exposes the rule to different interpretations. The purpose of HFRP to recover endangered species loses weight without language mandating such recovery. Further, without requiring consideration of benefits to endangered species, the proposed rule would allow opportunity for biases among the selection of private landowners. For example, a factor such as cost-effectiveness of a particular restoration agreement may outweigh any consideration or benefit to an endangered species.

Adopting this suggested change furthers the goal of protecting endangered species. Specifically, the endangered red-cockaded woodpecker (RCW) would receive heightened protection. Only five potentially viable RCW populations still exist, with one of the populations including private lands in southwestern Georgia. The RCW require strict habitats of older longleaf pines kept open by controlled fires. This bird is the only woodpecker in North America to chisel out cavities in live trees, generally in trees at least 120 years old. Building a single cavity can take RCWs several months to years, making cavities a limiting resource and

furthering the need to protect healthy forests. Without specifically designating endangered species as a priority in ranking properties, the Healthy Forests Reserve Program will not protect the necessary forest land to conserve the endangered RCW.

Therefore, we respectfully submit our comment for your consideration. Please contact us for any further questions at mboothroyd10@lawmail.mercer.edu or mdurland10@lawmail.mercer.edu.