

STATE OF CONNECTICUT

DEPARTMENT OF AGRICULTURE  
OFFICE OF THE COMMISSIONER

CONNECTICUT  
GROWN



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F. Philip Prelli  
Commissioner

August 3, 2009

550

Jon Glover, Acting Director  
Easements Programs Division  
Natural Resources Conservation Service  
Farm and Ranch Lands Program Comments  
P.O. Box 2890  
Washington, D.C. 20013

BY FACSIMILE 1.202.720.9689

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

**COMMENTS OF THE CONNECTICUT DEPARTMENT OF AGRICULTURE AND THE FARMLAND PRESERVATION ADVISORY BOARD ON THE INTERM FINAL RULE FOR THE FARM AND RANCH LANDS PROTECTION PROGRAM**

Dear Mr. Jon Glover:

We are writing to provide comments on the above-referenced Interim Final Rule (IFR) for the federal Farm and Ranch Lands Protection Program (FRPP) as published on January 16, 2009 and July 2, 2009. We request that our comments be considered and adopted by NRCS as it revises the rules and implements the program.

The State of Connecticut enacted legislation to create a Farmland Preservation Program in 1978, and over the past 30 year period, has completed, or been approved to complete, acquisition of development rights on 35,000 acres on 260 farms in Connecticut, at a cost of over \$110 million. Administered by the Connecticut Department of Agriculture, the Farmland Preservation Program has been awarded over \$13 million in funds through the federal Farm and Ranch Lands Protection Program for the preservation of qualified farms in Connecticut, since its inception in 1996.

In June 2007, Connecticut Governor M. Jodi Reil signed into law a bill creating a Farmland Preservation Advisory Board made up of representatives of Connecticut's farm community to advise the Commissioner and his Farmland Preservation Program on policy and decision making. We are also providing these comments on behalf of the Commissioner of Agriculture and the Farmland Preservation Advisory Board of Connecticut.

Thank you for the opportunity to provide these comments. Should you have any questions concerning these comments, or wish to discuss this matter further, you may contact me at the above address or phone at (860) 713-2511.

Sincerely,

*J. Dippel for Commissioner F.P. Prelli*

F. Philip Prelli, Connecticut Commissioner of Agriculture  
George Hindinger, Chairman, Farmland Preservation Advisory Board  
Joseph Dippel, Director, CT Farmland Preservation Program

Attachment

**Comments on the Interim Rule for the  
FARM AND RANCH LANDS PROTECTION PROGRAM  
Docket Number NRCS-IFR-08013**

**Issue: Hazardous Substances Review pursuant to Section 1491.4(f)(8):**

"Eligible Land" as proposed in Section 1491.4(f) of the interim rule, "Must possess suitable on-site and off-site conditions which will allow the easement to be effective in achieving the purposes of the program." The interim rule goes on to say that "Suitability may include...hazardous substances on or in the vicinity of the parcel...".

CT Department of Agriculture Comments: The State of Connecticut has some of the best soils *in the world*. The Connecticut River Valley has a long, proud history of farming. Crops can be grown here that cannot be produced elsewhere. Connecticut is famous for its tobacco and vegetable farms and orchards. Over the years, the vast majority of farms, employing the accepted Best Management Practices of the time, applied herbicides, pesticides and fertilizers, some of which are no longer available today.

The state's Farmland Protection Program has worked to bring quality farms into our program and has sought to leverage its funds by working with FRPP. The partnership has been a great benefit to the people of Connecticut. Per NRCS officials, farms seeking FRPP money must undergo a stricter, more detailed environmental review than previously required. Not only will there be a data base search, but also a site visit where a 62-page report must be completed for each farm, all of this prior to federal approval.

Most farms in the country have used chemicals and some contamination exists on them. It was not unusual for farms typically to have an area on site where they may have put old hay, equipment, sand and gravel or lumber. This does not necessarily make the land unsuitable for production agriculture. Connecticut's farms are no different. Under the interim rule, we foresee major problems for Connecticut farmers interested in preserving their farms, especially those farmers in the most fertile Connecticut River Valley. An environmental hazards assessment involving interviews with the current landowner is invasive and unwelcomed, especially for landowners who have been negotiating with Connecticut Department of Agriculture CT DOAg over several years, without any knowledge of this new federal requirement.

Others will not even want to go through the review process for fear of being told their property may be contaminated and for fear of what will become of the information being provided and how it is being evaluated and by whom. Such information could render the property unmarketable. Essentially, these new requirements will reduce the number of quality applications to our programs and reduce the number of Connecticut farms that FRPP will consider, thereby reducing the number of acres that can be preserved.

The interview process unfairly penalizes the family farmer who has owned the property for generations and has knowledge of, or access to, pesticide/herbicide records; whereas, a landowner who has owned a property for a limited time period, will have no knowledge of past pesticide/herbicide use. USDA may accept a "no knowledge of its presence" for a new landowner, and draw a different conclusion and outcome concerning environmental hazards than a family-farm landowner who has records. Furthermore, farmers who have property free of environmental hazards may resist participating in the program due to fear or misinformation regarding the interview process and future use of data collected.

Farmers, who have followed government rules and regulations regarding pesticide/herbicide use over time, should not be penalized if contamination is determined present by current standards. Since the program is intended to maintain and restrict property for its perpetual agricultural use, the risk is managed as no conversion to residential or other forms of development would occur that might heighten public exposure.

Further on this subject, the Connecticut Farmland Preservation Advisory Board resolved at its March 9, 2009 meeting, "The Farmland Preservation Advisory Board recommends to the U.S. Department of Agriculture - Natural Resources Conservation Service and to whom it may concern, that any farm using best management practices generally accepted at the time of implementation, which inadvertently resulted in soil or water contamination by current standards, should not be precluded from participating in the federal Farm and Ranch Lands Protection Program on this basis." (Ben Freund/Jim Zeoli - Unanimous)

As the Federal government is not making a real property acquisition, as indicated in the IFR dated July 2, 2009, a records search of the subject property and abutting properties, that does not require landowner interviews, may provide sufficient information (CERCLA, Superfund), and may be all that is warranted, from which to make an informed decision regarding environmental hazard risk.

Lastly, under Section 22-26cc(a) of the Connecticut General Statutes, the state Farmland Preservation Program is permitted to purchase easements on farms that have used previously approved agricultural chemicals such as dieldrin, DDT, aldrin and other organochlorine pesticides. This comes from a basic understanding of farming and farm practices here in Connecticut, as well as the knowledge that the agricultural soils in our state are truly special and need to be preserved for future generations. We would hope that the United States takes a similar view to preserving our farms and farming heritage.

**Issue: Forest Management Plan Review pursuant to Section 1491.4(f)(5):**

Section 1491.4(f)(5) states, "Forest land that exceeds the greater of 10 acres or 10 percent of the easement area shall have a forest management plan *before closing*." (emphasis added) Section 1491.3 defines "forest management plan" as "a site-specific plan that is prepared by a professional resource manager...".

The Connecticut Department of Agriculture is concerned that this requirement will be cumbersome, time consuming and potentially costly, thereby delaying closings. There are a limited number of foresters qualified to prepare such a plan for farmers here in the state; however, a majority of our farm applications would trigger the requirement of a plan. The Connecticut Department of Environmental Protection would likely need additional funding if the burden of producing the plans falls on them. Private foresters will rightfully charge fees for their services, thereby reducing the money available for purchasing easements. It will be a timely process that will hinder the preservation process unnecessarily. It is our position that a forest management plan is advisable, but should not be required. Further, the timeframe to complete such voluntary plan, should apply to a minimum of 25 acres or more of forest lands, rather than 10 acres, and it should be within 5 years of closing, not the closing date itself.

Further on this subject, the Connecticut Farmland Preservation Advisory Board resolved at its March 9, 2009 meeting, "The Farmland Preservation Advisory Board recommends to the U.S. Department of Agriculture - Natural Resources Conservation Service and to whom it may concern, that farmers with a minimum of 25 acres of forest on the farm should be advised, but not mandated, to obtain a forest management plan within five years of participating in the federal Farm and Ranch Lands Protection Program." (Ben Freund/Terry Jones - Unanimous).

Connecticut has a use value assessment program for forest and farm owners of 25 acres or more, allowing for property tax relief. Connecticut's current tax assessment program requires a forest stewardship plan

on a minimum of 25 acres of forest lands. Said plan ideally would be used to meet the FRPP requirement, thus eliminating a new cost to the farm landowner.

**Additional Comments by Connecticut's Farmland Preservation Advisory Board:**

Connecticut's Farmland Preservation Advisory Board was established to advise the Commissioner and the Farmland Preservation Program on policy and decision making. At its March 9, 2009 meeting, the Farmland Preservation Advisory Board passed two resolutions by unanimous vote of its members in response to the request for public comment on the IFR. On behalf of the Farmland Preservation Advisory Board of Connecticut, we ask you to also consider said resolutions listed below in your final rulemaking for the FRPP.

*"The Farmland Preservation Advisory Board recommends to the U.S. Department of Agriculture - Natural Resources Conservation Service and to whom it may concern, that any farm using best management practices generally accepted at the time of implementation, which inadvertently resulted in soil or water contamination by current standards, should not be precluded from participating in the federal Farm and Ranch Lands Protection Program on this basis."* (Ben Freund/Jim Zeoli - Unanimous)

*"The Farmland Preservation Advisory Board recommends to the U.S. Department of Agriculture - Natural Resources Conservation Service and to whom it may concern, that farmers with a minimum of 25 acres of forest on the farm should be advised, but not mandated, to obtain a forest management plan within five years of participating in the federal Farm and Ranch Lands Protection Program."* (Ben Freund/Terry Jones - Unanimous)

This recommendation is based on our current assessment taxation program that requires a forest stewardship plan on a minimum of 25 acres of forest lands.

**In Connecticut, we're in agreement with many of the comments on the rule of American Farmland Trust (AFT)**

**Issue: Contingent Right of Enforcement:**

We agree that the program should be administered in a way that recognizes the protections afforded some easements under state law and constitutions. Where an easement is held or co-held by a state and that state's laws or constitution not only gives its Attorney General standing to enforce its easements, but would compel him or her to do so, the United States' interests are adequately protected through the state's obligation to enforce its easement terms. Where an eligible entity can show that its easements will enjoy the same degree of protection through state law or constitution as would be provided through a federal contingent right of enforcement, USDA should allow for a waiver or assignment of the federal right of enforcement to the state. We also ask USDA to reevaluate all elements of the IFR and the template cooperative agreement due to the revised interpretation of the right of enforcement. For these entities, a number of program provisions designed to protect the interests of the United States are duplicative and unneeded and should be eliminated.

These include:

- Title review as described by Department of Justice title standards
- Technical review of USPAP appraisals
- NRCS' "reserved right" to require additional language or to remove language in an easement deed to protect the interests of the United States

**Issue: Certification:**

We agree that certification could provide a valuable means to reduce administrative burdens and unneeded program requirements for well-established farmland protection programs while retaining these administrative reviews and program requirements for entities that have little experience and need additional oversight. We agree and recommend that NRCS rewrite the rule to develop a robust certification program for certified entities that would minimize appraisal and title reviews, enable entities to use their own project selection criteria and process, allow entities to use their own terms and conditions without any reserved authority on the part of USDA, and eliminate what has been described by the FPP National Program manager as a new requirement for landowner interviews. Certification could also provide the mechanism for reviewing the state protections, if any, afforded easements held by an eligible entity, and allowing an assignment or waiver of the contingent right of enforcement in those instances where states have an equivalent obligation to enforce the terms of an easement.

We believe here in Connecticut we should qualify as a certified entity, and there are good reasons why it should be. Since 1979, CTDoAg has protected, or is in the final stages of closing on, over 35,000 acres in 260 farms. CTDoAg meets the criteria for certification, except for the closing efficiency. The closing process for CT is lengthened because of better than average due diligence involving qualified independent appraisals to yellow book standards with technical review by in-house certified appraiser on staff, title work, A-2 perimeter surveys by licensed surveyors based on State (and National) standards, and State Properties Review Board approvals. The federal government is getting a better product because of this timely process. Without certification, USDA is required to duplicate CTDoAg's already thorough legal due diligence.

The certification process, as currently defined, should be made more flexible to allow an entity such as CTDoAg to qualify as certified.

**Issue: Definition of agriculture:**

We agree that a state's definition of agriculture—for its state farmland protection program is the best reflection of the type of agricultural uses found in a state and should not be subject to second-guessing by NRCS, provided such uses or activities that may lead to degradation of the soil or diminish the agricultural productivity or utility of the soil are conducted in an approved, soil sustainable manner.

**Issue: Forest management plans:**

As noted earlier herein, we also support the development of forest plans as a way to offer landowners a pathway to improve the economic and environmental performance of their woodlots and forestlands, however, we are concerned that this new requirement imposes an unnecessary additional administrative burden on NRCS and partners and adds another layer of red tape that could further erode landowner interest in the program. We would support the method of proof of the land's enrollment in a state's current use or forestry assessment program.

We concur with AFT that to require a forest management plan, especially prior to the closing of a project, would severely limit the number of projects that would be eligible and would require the devotion of significant federal and/or state and/or private resources to the development of these plans, all of which are highly unlikely in the current economic climate. And we additionally agree to recommend that the rule specifically provide that a plan created for compliance with a state's agricultural or forestry use tax assessment program would suffice as an acceptable forest management plan.

Such a requirement as proposed would be an unnecessary, costly and timely administrative burden on both USDA-NRCS and the farmer.

**Issue: Impervious Surfaces:**

We believe that eligible entities should be permitted to use their own terms and conditions for conservation easements so long as such terms and conditions "include a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted." And that is in compliance with their state statutes for agricultural lands preservations. So long as eligible entities include in their deed of easement an impervious surfaces standard and provide for a review and approval process for agricultural structures, we suggest leaving development of specific standards to the eligible entity.

**Issue: Ranking consideration and proposal selection:**

We agree with AFT and recommend that the ranking considerations and proposal selection process for individual projects be left to certified entities as part of a robust certification process and system. For non-certified, eligible entities, a ranking consideration and proposal selection process developed by NRCS makes sense.

We recognize that, in some states, NRCS may need to compare projects across the spectrum of applications submitted by certified and non-certified entities. Therefore, we support having NRCS identify broad categories of ranking criteria to be covered by certified entities in their criteria and selection process. These categories would ensure consideration of a common set of resource and location issues such as soils, land type, farm size, development pressure and proximity to other farms and protected lands without imposing the specificity of nationally applied criteria on certified entities as now envisioned by NRCS.

**Issue: Signage:**

We believe farms should not be limited to signs that merely identify the farm, or only identify the farm, or only identify the farm as a participant in FRPP or the State of Connecticut's Farmland Preservation Program. Sign requirements and limitations should be left to the local municipalities to determine and enforce.

The Connecticut Department of Agriculture names dairies annually as "Dairy Farm of Distinction" and those farms commonly display, with pride, that designation. Farmers will often display signs for manure, compost, eggs and the like. They will also post signs that promote local farmer's markets and agricultural fairs. FRPP should not be constraining all preserved farms as to how they market themselves, their product(s) or how they promote local agriculture.

Additionally, signs in Connecticut are generally regulated by the municipality and should be left to their local jurisdiction.

**Issue: The contribution of the Farm and Ranch Lands Protection Program to furthering the Nation's efforts in renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or reducing net carbon emissions.**

Connecticut is in the process of evaluating climate change and assessing risks and strategies for how for how Connecticut agriculture may adapt to changing climate over the next century. An Agriculture Working Group is compiling information about the anticipated impacts to agriculture and working through the assessment process. They will be meeting throughout the remainder of the year and will provide a report to the Governor.

Specific projects on FFPP lands need to be addressed individually to evaluate and confirm such projects are in compliance with the parameters of the deed covenants and program general statues. Depending on what the projects are and how they are being proposed on program farmlands will determine whether or not they will be permitted on restricted farmland areas.