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Fax Cover Sheet

To: John Glover, Acting Director, Easements Programs Division,
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(Fax: 202-720-9689)

From: Jack Anderson, President
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Tel: 207-883-3064

Date: August 3, 2009

Re: Farm and Ranch Lands Protection Program Comments

Pages (including this cover sheet): 6

COMMENTS OF THE SCARBOROUGH LAND CONSERVATION TRUST ON
THE CORRECTED INTERIM FINAL RULE [IFR] FOR THE
USDA-NRCS FARM AND RANCH LANDS PROTECTION PROGRAM

Docket Number NRCS-IFR-08013

While Maine's Farmland Protection Program is not as long-lived or well-funded at the state level as those of our counterparts in Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont; it is rapidly gaining ground. The Scarborough Land Conservation Trust, a nonprofit land trust in Scarborough, Maine has been able to protect the Meserve Farm (now known as Broadturn Farm), a 434-acre property with prime agricultural farmland, timberland, streams and hayfields, with a combination of FRPP funding and funding from Maine's Farmland Protection Program.

Maine's Farmland Protection Program is predicated on the reality that Maine's greatest agricultural strength is its diversity of commodities, soils, geographies and culture. Therefore, the following comments and recommendations are based on our overall interpretation of the **Food, Conservation, and Energy Act of 2008** (the Act), Section 1238H (2) (A) (iii), that is, that the protection of land through FRPP "...will further a State or local policy consistent with the purposes of the program." This point is critical to our case, as it underscores that the Act is intended to support, rather than to direct or dictate State or local policy.

I. Certification Program

As is more fully articulated in joint comments presented by the Maine Department of Agriculture and the Maine Farmland Trust, the legislative intent behind establishing certification of states and non-governmental entities was to eliminate duplicative effort, reduce costs and minimize delays in protecting farmland. The Maine Department of Agriculture, through which our state farmland funding is funneled, subjects our projects to extremely rigorous title, appraisal and easement review. However, because there is no process for Maine to obtain certification for the FRPP funding, our projects must undergo review both through Maine's program and through state and national NRCS offices. Such duplication is unnecessary and is wasteful of our precious farmland protection dollars.

Not only should there be a certification process for states, but also for experienced non-governmental entities such as the Scarborough Land Conservation Trust who have the capacity to complete acquisitions in the contract term and to effectively monitor and enforce easements' terms to safeguard the public's investment. Again, the rationale would be to build in efficiency and eliminate duplication. Once established by Rule, this portion of the certification process could be carried out and overseen by the certified state program.

Summary Recommendations regarding Certification:

- a. The IFR must include a process by which entities may apply to be certified, paralleling the current eligibility requirements for the Cooperative Agreement.

b. Established (and certified) state programs should be empowered to certify new non-governmental entities, using the same requirements.

2. Cooperative Agreement Template

Farmland protection in Maine has been furthered by the national program's decision to allow eligible land trusts to become cooperating entities, and this has been important to the Scarborough Land Conservation Trust's efforts in supporting agriculture and advocating for the reduction of our community's carbon footprint and increased local investment in food security. However, our work is at times hampered by the restriction in the cooperative agreement that precludes purchase of conservation easements from non-profit organizations, including land trusts. There are situations in Maine in which it makes sense for a land trust or other such entity to own and operate farmland. Like farmland owned by individuals, this land can be at risk for future development unless permanently protected. Furthermore, just as it does for individual farmland owners' sale of development rights on lands owned by non-profit entities provides funds for long-term investment in farming activities on the land as well as for additional land protection projects. Presently the Cooperative Agreement does not support this type of effort.

Summary recommendations regarding the Cooperative Agreement

a. The IFR should be expanded to give the Chief discretion to allow non-profits, including land trusts, to conserve farmland as landowners on a permanent and not just a temporary basis.

b. The IFR must direct the NRCS to allow states and local entities to modify the general indemnification language when necessary in order to *allow those entities to comply with state laws or organizational by-laws while still satisfying the contractual obligations of the Cooperative Agreement.*

3. Conservation Easement Required Terms

Through the efforts of the Maine Department of Agriculture, the Scarborough Land Conservation Trust has been able to negotiate language changes in conservation easements that account for farms in our region. These changes have reflected Maine's diversity of agriculture, and have furthered the purposes of our programs and met the needs of our farmers here in Maine. The new IFR, and the restrictions set forth in the Cooperative Agreement Template threaten to undo past progress and limit agriculture to older, less diverse business models.

A) Forest Management Plan – This IFR requirement puts a significant and unnecessary financial burden on Maine's farmland owners, exceeds the scope of the FRPP program and will slow or stop Maine's Farmland Program from protecting key agricultural properties in the state.

Maine's USDA-approved easement boilerplate currently provides for a landowner to conduct Commercial Forest Management, including the harvesting and sale of timber, only if the landowner has a Forest Management Plan prepared and certified by a licensed Maine forester and such activities are done on a sustainable yield basis. The grantor is required to provide the grantee with a copy of the Plan and any subsequent amendments for review prior to commencement of any commercial forest management activities.

B. Rural Enterprises, Signage and Snowmobiles – The IFR limitations on these typical farm activities stand to threaten the long-term viability of Maine's protected farms. The easement must allow a farm to add or change its enterprise activities over time.

Maine's USDA-approved easement defines agricultural enterprise, agricultural management, agritourism, commercial forest management, farmstead and farmstand areas, home-based business, recreational and habitat improvements and traditional non-intensive outdoor recreation. It restricts snowmobile activities to frozen or snow-covered ground along designated trails and off of the agricultural soils. And it reserves a grantor's right to propose new agricultural and forestry management, agricultural enterprises, agritourism, home-based enterprises and traditional non-intensive outdoor recreation uses or activities not specified in the easement. Such proposal must be presented to grantee and any third party holder in writing, must conform to recommendations and requirements of the NRCS Conservation Plan and Forest Management Plan, and must not damage the Conservation Values of this Conservation Easement. Any such proposal may not be implemented until such time as grantor has obtained the grantee's and the third party holder's prior written consent and approval.

C. Energy Generation – The IFR does not address on-farm energy production and use.

Maine's USDA approved easement allows for the generation and storage of electrical energy and other energy sources primarily for consumption on the Protected Property understanding that there are times that some excess energy will need to be stored on the grid.

Summary recommendations regarding the Conservation Easement requirements

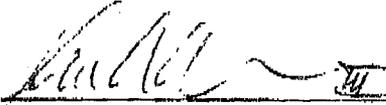
a. The IFR should require established (and certified) state, publicly-funded local programs and non-profit entities to use the one easement boilerplate that has been developed and approved by the state. The IFR should also require all future certified entities to follow the state boilerplate. (This is the current practice in Maine.)

b. The IFR should allow established and certified state programs to use and to amend the state approved boilerplate as needed as agriculture in New England changes over time, and especially as each state furthers its abilities to increase renewable energy production, mitigate the effects and adapt to climate change, and reduce net carbon and greenhouse gas emissions.

Comments from Maine

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The Scarborough Land Conservation Trust is grateful for the financial assistance provided through the FRPP, and welcomes this opportunity to provide feedback from a small organization that is trying to protect farmland in one of the fastest growing towns in the State of Maine in an effort to further improve this program.



August 3, 2009

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