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March 16, 2009

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Easements Programs Division
Natural Resources Conservation Service
Farm and Ranch Lands Program Comments
PO 2890, Room 6819-S
Washington, D.C 20013

RE: Docket Number NRCS-IFR08006, Farm and Ranch Lands Protection Program Interim Rule

Texas Parks and Wildlife Department (TPWD) appreciates the opportunity to comment on the interim rule affecting Farm and Ranch Lands Protection Program as provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)

Generally, we felt the rule was well written, but we do have a few suggestions that we think would improve the program's applicability to farm and ranch lands across the country. Specifically, we noticed the rule refers specifically to farm land and not to "ranch land," which is a very large component of the landscape here in Texas. Because it is the Farm and Ranch Lands Protection Program (FRPP) and ranch lands are eligible for enrollment, we recommend using the term "farm and ranch lands" in all statements, references and provisions throughout the rule so potential participants and the public clearly understand the program is about the protection of the nation's farm lands and ranch lands. Our specific recommendations and concerns about the interim rule are highlighted in the attached comments for your consideration and inclusion in the final rule.

Please do not hesitate to contact Chuck Kowaleski, TPWD's Farm Bill Coordinator, at 254-742-9874, or Chuck.Kowaleski@tpwd.state.tx.us if you have any questions or need additional information. Thank you again for the opportunity to submit our comments.

Sincerely,

Carter Smith
Executive Director

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Attachment

Comments on the Farm and Ranch Lands Protection Program Interim Rule
Submitted by Texas Parks & Wildlife Department

General Comments on the rule:

Numerous times the rule refers to farm land and not to "ranch land." Because it is the Farm and Ranch Lands Protection Program (FRPP), we recommend using "farm and ranch lands" in all statements, references and provisions throughout the rule so potential participants and the public clearly understand the program is about the protection of the nation's farm lands and ranch lands

Specific Comments on the Rule:

Page 2819 § 1491.3 Definitions

- TPWD supports the definitions of "farm and ranch land of statewide importance," "farm and ranch land of local importance," and "other productive soils" as provided in the rule and does not recommend any changes in these definitions for the final rule
- The definition of "forest land" includes the specific growth habits of "single-stemmed woody species of any size that will be at least 13 feet tall at maturity." We do not understand why this specific growth habitat was included in the definition, but we believe it will limit the program's applicability in some areas. Depending on the region of the country, annual precipitation, whether the species is invasive or native to the area, previous management treatments, natural regeneration patterns, and other factors not all woody species that should be eligible under this definition are "single-stemmed" or will be "at least 13 feet tall at maturity." Specifically, some thornshrub and juniper species are technically multi-stemmed and may not reach 13 feet at maturity because of previous management treatments, but we believe they should be eligible under the definition of forest land. Therefore, we suggest the following modifications to the first sentence in definition of "forest land."
 - Forest land means a land cover or use category that is at least 10 percent stocked by noninvasive woody species of any size.
- There is no definition of impervious surface in the rule but the term is used in the rule in Section 1491.22(i). Because interpretation of "impervious surface" could dramatically vary across the country and affect the quality of the easement, we recommend including a definition of impervious surface in the final rule. TPWD recommends incorporating the following definition of "impervious surface" in the rule:
 - Impervious surface means a constructed surface covered by impenetrable materials such as asphalt, concrete, brick, and stone. These materials seal surfaces, repel water and prevent precipitation and meltwater from infiltrating soils. Soils compacted by repetitive use by machinery or vehicle use may be considered impervious.

Page 2820 § 1491.4 Program requirements.

- (d)(5) Refers to NGOs' dedicated fund that "is sufficiently capitalized in accordance with "NRCS standards." We believe that having a "standard" is beneficial to all involved

because it offers an equal playing field and clearly articulates expectations. However, based on the rule it is unclear (1) what the "NRCS standards" are; (2) whether these standards for NGOs are different from or the same as those standards for NRCS or other federal agencies; and (3) the standards should be clearly articulated for program clarity and transparency. Therefore, we recommend including information about the "NRCS standards" in the final rule.

- (f)(8) There appears to be a spelling error in the second sentence of this section. We believe that "Suitability" may need to be replaced with "Unsuitable" for this sentence to make sense.
- (f) (9) "May be land on which gas, oil ... offered for participation in the program." TPWD supports provision (9) as written in the rule. It is vitally important that this provision remain in the rule as stated because many of the mineral rights in the west are held by the federal government under private property. Furthermore, this allows NRCS the much needed flexibility to address mineral right concerns as appropriate in each state and individual easement.

Page 2821 § 1491.6 Ranking considerations and proposal selection.

(g)(8) "Landowner willingness to allow public access ..." TPWD supports the concept and inclusion of such a provision in the rule. However, this statement is rather open-ended, and it is conceivable that an eligible entity could be willing to allow public access for recreational purposes during the ranking consideration and proposal selection processes but then withdraw that public opportunity at a later date after the easement is perfected. This would be unfair to others in the ranking/selection process as well as to the public. Therefore, we recommend the following modifications to this provision:

- (g)(8) Landowner willingness to allow public access for hunting, fishing, trapping, and other wildlife-associated recreation purposes as part of an established state-administered public access program.

Page 2822 § 1491.21 Funding.

(d) "... a minimum of 25 percent of the purchase price of the conservation easement." The law states that an eligible entity shall provide "not less than 25 percent of the acquisition purchase price." The "acquisition purchase price" is different from the "appraised fair market value" of the conservation easement, and the former should include all related administrative and transaction costs incurred by the entity. Therefore, we recommend modifying this provision to read as follows:

- (d) The entity must provide a minimum of 25 percent of the acquisition purchase price of the conservation easement, which may include related administrative and transaction costs incurred by the entity.
- (e) "FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity." We believe as written, this provision will make it financially difficult for some entities to enter into FRPP agreements, may limit the program's applicability under the current economic climate, and that these expenses should be considered part of the "acquisition

purchase price.” In order to provide more state flexibility, healthy competition among potential participants, and use of the FRPP across the country TPWD supports these costs being used as part of an entity’s contribution, matching cost, or acquisition purchase price for the easement to FRPP funds. Furthermore, we suggest allowing FRPP funds to be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.