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July 27, 2009

John Glover  
Acting Director  
Easement Programs Division  
Department of Agriculture  
Natural Resource Conservation Service  
Farm and Ranch Lands Protection Program Comments  
P.O. Box 2890  
Washington, D.C. 20013

RE: Farm and Ranch Lands Program Comments

Dear Mr. Glover:

Enclosed are comments from the Franklin Land Trust (FLT) concerning the correction to the Farm and Ranch Lands Protection Program Interim Final Rule (Docket Number NRCS-IFR-08013) as published on July 2, 2009.

FLT encourages the NRCS to consider and adopt these comments as it moves forward to revise the FRPP rules. Please feel free to contact me should you have any questions concerning our comments.

Sincerely,

Richard K. Hubbard  
Executive Director

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Comments of the Interim Final Rule and Correction  
FARM AND RANCH LANDS PROTECTION PROGRAM  
(Docket number NRCS-IFR-08013)

Franklin Land Trust, Inc.

The Franklin Land Trust (FLT) is a 501c3 nonprofit land conservation organization founded in 1987. Over its 22 years of existence, FLT, in partnership with the MA Department of Agricultural Resources' Agricultural Preservation Restriction (APR) Program, has facilitated the protection of over 100 farms in western Massachusetts, totaling close to 9,000 acres, primarily through the pre-acquisition of APRs.

Contingent Right of Enforcement

FLT is pleased that the NRCS has clarified that the right of enforcement does not constitute an acquisition. In light of this finding, FLT encourages the NRCS to eliminate all duplication of due diligence performed by eligible entities, such as title reviews, appraisal reviews, and environmental site assessments, where the eligible entity has well established requirements and procedures for the acquisition of easements.

The duplication of due diligence related activities by the NRCS, especially where the ultimate holder of the restriction is a state farmland protection program or NGO with a long history of successful farmland protection projects, constitutes a waste of limited resources and an impediment to the timely completion of easements. In fact, a number of APRs facilitated by FLT which were on tract to close during FY2009 languished into FY2010 while awaiting NRCS title reviews. Closing delays due to duplication of due diligence can result in significant expenses for both land trusts and landowners for such things as interest costs.

Easement Requirements

In light of the NRCS' determination that it is not acquiring a real property interest, and given the fact that land management issues and concerns vary across the country and are often farm specific, it should be left to the eligible entity to determine what easement language best protects a farm's natural resources and economic viability. FLT objects to the NRCS stipulating that easements require such things as Forest Management Plans for protected woodland and that they prohibit such things as snowmobiles, signage (except to identify signs) and the subdivision of protected farms.

Designation of NGO's as Eligible Entities and Landowners

FLT is pleased that the IFR includes a provision that allows the Chief to determine that an NGO, "whose purpose is to protect agricultural use and related conservation values" is an eligible entity and qualified landowner. The intent of this provision is to allow said NGO to prevent a farm from being lost to non-agricultural development through foreclosure. However, for this provision to be practical in its application there needs to be a mechanism whereby an NGO can request a blanket determination by the Chief that it is an eligible entity and landowner, rather than having to seek a determination on a farm by farm basis.

Many foreclosure sales, as well as sales of farms that are subject to rights-of first refusals running to a town through Massachusetts' Chapter 61A preferential assessment program (said ROFR's being assignable to nonprofit land conservation organizations such as FLT), are brought to a land trust's attention when a sale is imminent. As a result, the land trust is often asked to react to such sales with days to spare. It is, therefore, impractical for a land trust to have to seek a determination from the Chief prior to each auction or sale.

### Ownership of FRPP protected farms by non-profit organizations

FLT requests that the NRCS allow FRPP protected farms to be permanently owned by NGO's, "whose purpose is to protect agricultural use and related conservation values." FLT was recently encouraged by a farmer to consider buying an FRPP protected farm. The farmer had limited capital, and he hoped to be able to enter into a lease/purchase agreement with FLT until he was able to generate enough resources to purchase the farm from FLT. However, the FRPP prohibition against nonprofit ownership prevented FLT from assisting this farmer.

Many land conservation organizations concerned about encouraging the next generation of farmers are considering innovative approaches to enabling young farmers, with limited capital, to access farms. The NRCS private ownership requirement works against these efforts to encourage the long-term viability of agriculture. In addition, in some cases nonprofit ownership is a preferable outcome for a protected farm. Many protected farms are subject to pressure from the estate market. Once a farm is purchased by an estate buyer, its agricultural use is often marginalized due to the landowner's concern about noise, dust, chemicals, etc. Ownership by a nonprofit that is more tuned-in to the needs and nature of agriculture would certainly be a preferable outcome for that farm.