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Farm and Ranch Lands Protection Program

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Submitter Information

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General Comment

Re: Docket Number NRCS-IFR-08013

For what it is worth, I submit the following pertaining to AFT's comments on the five subjects below:

1. Requirements regarding easement terms and conditions should reflect new interpretation of "contingent right of enforcement"

I strongly endorse NRCS's interpretation of the "contingent right of enforcement" NOT indicating the acquisition by the federal government of any real rights in the protected property. However, I do not feel that is unrealistic to allow the government to require that specific terms and conditions be included in the easement document since they still have a fiduciary responsibility to the tax payer to insure the use of the public funds are within reason and support the purpose of the agency providing those funds.

2. Certification Should Be Used To Provide a Meaningful Way to Reduce Administrative Review for Experienced Entities

I agree that there should be an incentive to becoming Certified, and that the Certification Process needs to be rigorous, but I do not believe there should be no intervention of the government in the review process whatsoever even if the program was fully Certified. I would suggest the reward for Certification be that the review process be handled at the State level vice the federal level. i.e. use OGC reviews for un-certified programs only.

3. Forest Management Plan Requirement Should be Eliminated or Significantly Revised

I agree in principal with AFT's comment, but feel that the threshold that determines whether or not a Forest Management Plan (FMP) is required be set in terms of the percentage of forested land within the bounds of the encumbered property. If the property is restricted from development and/or subdivision under the grant, difficult times may motivate a farmer to look to timbering his woodlands for its economic return. Whether the cut off for a mandatory FMP is 10 or 100 acres may very well be a moot point depending upon the nature of the forest and the need of the owner. The Nature Conservancy has been quite successful simply inserting into the terms and conditions of the easement that there will be no timbering (other than for personal firewood) on the restricted property without a FMP being drawn up by a consultant or state forester, and agreed upon by the holder of the easement.

(With a specified acreage threshold, even a ten acre patch of woods could get inappropriately timbered if a forested neighbor happened to be clear-cutting his property.

4. Impervious Surfaces Policy Should be Revised

I feel the conservation and farming communities pretty well agree that the less impervious surface there is on a property, the healthier it is for the conservation values of that property as well as those for the surrounding properties. Thus "appropriate" impervious limits should be required, but the local agency should make the determination of what is appropriate. The lay of the land, location relative to other sensitive conservation resources, the type of agriculture done in the community, and the size of the property all must be factored into how much, and just as importantly, where the impervious surfaces will and will not be allowed. If a limit must be federally imposed, I would suggest that the 16% waiver limit be used as the maximum allowed under any circumstances. Alternatively, this could be tied to the whether or not a program is certified.

5. National Ranking Factors Should be Reconsidered

I am adamantly against using national ranking criteria to determine qualification for the program. If practical, suggestions for ranking criteria could be included in the act editorially, but beyond that, I think the many variances in the nature of farming around the country would lead to major inequalities. How do you compare a small truck farm operation on a scenic and sensitive (in terms of water quality) tributary

to a large grain farm in the prairie lands, etc. Creating equitable ranking criteria at the state and/or local level is difficult enough, but the federal level would be impossible.

PERSONAL INFORMATION of the Submitter of these comments: 30 years in the real estate industry, with the last 10 as Director of Land Protection on the Virginia Eastern Shore at The Nature Conservancy's Virginia Coast Reserve Office. I was also involved in the Northampton County's creation of a Purchase of Development Rights Program, and have served on the Northampton County PDR Committee for the past two years, having recently completed the first County PDR acquisition with the aid of a \$500,000 FRPP Grant. I did one other FRPP deal 4 years ago, just a bit larger, and have been notified by NRCS verbally that the County's new FRPP grant request was approved. In total, I have negotiated, drafted and closed on more than 30 conservation easements here on the Shore.