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State of New Jersey
STATE AGRICULTURE DEVELOPMENT COMMITTEE
HEALTH/AGRICULTURE BUILDING
PO Box 330
TRENTON NJ 08625-0330

JON S. CORZINE
Governor

CHARLES M. KUPERUS
Secretary of Agriculture

Susan E. Craft
Executive Director
(609) 984-2504
(609) 292-7988
FAX (609) 633-2004

September 21, 2006

Charles M. Kuperus
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(via fax and regular mail)

Easement Program Division, NRCS
1400 Independence Avenue, SW
Room 6819-S
Washington, DC 20250-1400

Re: Federal Farm and Ranch Lands Protection Program
Interim Final Rule Comments

The New Jersey State Agriculture Development Committee (SADC) has reviewed the proposed Federal Farm and Ranch Lands Protection Program interim final rule. The SADC greatly appreciates the funding it receives under this Program, but has a few concerns with the rule, as set forth below.

1. **Definition of Fair Market Value:** The proposed rule requiring an appraiser to consider the entire property in the "before" and "after" conditions is consistent with the appraisal procedures adopted by the SADC in that if a landowner does not intend to preserve a portion of his farm, and that portion has been formally subdivided at the time of the appraisal, the appraiser is not required to consider the subdivided portion in his or her analysis.

2. **Eligibility of Forest Lands:** The proposed rule, which has been relaxed to allow for no more than two thirds of the easement acreage to be occupied by forested acreage appears reasonable. The SADC's ranking criteria usually assures that a farm with less tillable acreage will rank lower than a farm that is all tilled. However, an analysis of our preserved farms indicates that on average, approximately 30 percent of the easement acreage on preserved farms is wooded. It is also common to find stream corridors, wetland areas and steeply sloped areas on farms in New Jersey encompassing a portion of the preserved farms. Allowing up to two-thirds of forested areas would provide ample flexibility to the program.

3. **Real Property Interest of the United States:** We are concerned with the proposed amendment requiring the federal government to be recognized as a grantee. In the past, the contingent right of the United States of America was limited to enforcement of the easement in the event that the easement holder failed to enforce the terms. In addition, the NRCS was responsible for ensuring that highly erodible soils were protected on the preserved farm. The proposed amendment requiring the NRCS to be a grantee introduces the issue of whether the NRCS is now required to partake in all of the enforcement and decision-making responsibilities of the grantee, such as the review and approval of future subdivision of the restricted farm, replacement of existing residences, construction of agricultural labor housing and other responsibilities set forth in the SADC's deed of easement.

The SADC understands that the intent of this amendment is not to alter the fundamental relationship between NRCS and the grantee, but we are concerned that this additional level of review and approval for each of the grantee's decision-making responsibilities under the Deed of Easement may hinder the SADC's ability to process landowner requests in a timely fashion.

If the NRCS does not intend to have the decision-making authority of the other grantees and the SADC in the Deed of Easement -- other than the right of enforcement and protection of highly erodible soils -- we request that the interim rule be amended to clearly state this.

We also note that the requirement of securing a separate title policy for the NRCS will add additional time and costs to the closing process. The SADC has been making great efforts to streamline its preservation of farms and this requirement would impede those efforts.

3. **Title review:** The requirement of title review by the NRCS adds another layer of review that could hinder the closing process. The New Jersey Office of the Attorney General and the SADC's internal legal staff reviews each title commitment prior to closing. In addition, if a local government agency or nonprofit agency is preserving a farm, their own attorneys review the title work as well. Based on these multiple layers of legal review, we question the necessity of an additional legal review, as it will add significant time and cost to the overall process. As stated above, the SADC has been making great efforts to streamline its preservation of farms and this requirement would impede those efforts.

4. **Appraisal:** We do not believe it is necessary to require appraisers to be trained in yellow book standards. New Jersey's regulations require each appraiser of farmland preservation properties to be a state-certified general real estate appraiser with prior experience in appraising agricultural lands, have an office that is capable of completing assignments, and follow the Uniform Standards of Professional Appraisal Practice (USPAP). In addition, each appraiser is required to attend at least one

SADC-sponsored appraiser conference every two years to ensure that he or she understands legislative, regulatory and policy changes to New Jersey's farmland preservation program. We believe these professional requirements are stringent enough to ensure the integrity and reliability of our appraisals.

5 **Impervious Surface Limitations:** The SADC believes that the impervious cover restrictions impose undue hardship on the landowners. A range of two to six percent impervious cover restrictions on preserved farms has a direct impact on the number of farmers willing to participate in the program. Landowners are hesitant to severely limit future agricultural enterprises that may require impervious cover that is greater than the limits imposed by the federal deed restrictions. In addition, landowners are not receiving any additional compensation for the additional restrictions, making them less willing to accept the restrictions. These limitations may make it difficult for the SADC to expend the federal funds it has received.

6 **Indemnification:** The rule states that the specific indemnification language will be set forth in the FRPP cooperative agreement. The SADC objects to this language, as it gives NRCS the ability to require stringent indemnification and warranty provisions in the cooperative agreement. For example, the most recent Cooperative Agreement originally required a landowner to warrant that he or she is not in violation of any environmental laws. Fortunately, NRCS was amenable to changing this language, as the SADC was concerned that landowners would not be willing to agree to such a warranty.

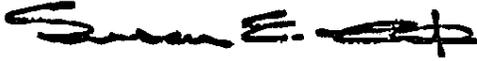
We request that the rule explicitly limit the indemnification to the skeleton language set forth in the rule -- "to indemnify and hold harmless the United States from any liability arising from or related to property enrolled in the NRCS." Otherwise, it is likely that landowners will not be willing to accept stringent indemnification and warranty language, making it difficult for the SADC to expend the federal funds it has received.

The SADC recognizes that when grant monies are being provided, there needs to be standards to ensure that the funds are used properly. However, as suggested by other states, a certification provided by the State, local governments, or non-profit agencies, may be a more efficient way to ensure that the federal requirements and concerns are being met.

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Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact me.

Sincerely,



Susan E. Craft

c: Janice Reid, Assistant State Conservationist, NRCS (via fax and regular mail)

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