



SUSTAINABLE AGRICULTURE COALITION

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Robert Glennon
Farm and Ranch Lands Protection Program Manager,
Easement Program Division, NRCS/USDA
1400 Independence Avenue, SW., Room 6819-S,
Washington, DC 20250-1400

Comments submitted by regular mail and by fax to 202-720-9689.

RE: Comments on Interim Final Rule for the Farm and Ranch Land Protection Program,
Federal Register, Vol. 71, No. 144, at p. 42567 (July 27, 2006).

Dear Mr. Glennon:

On behalf of the Sustainable Agriculture Coalition (SAC), I am submitting these comments on behalf of the Sustainable Agriculture Coalition on the interim final rule of the Farm and Ranch Land Protection Program as published in the Federal Register on July 27, 2006.

The Coalition's member organizations include the Agriculture and Land Based Training Association, American Natural Heritage Foundation, C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Center for Rural Affairs, Dakota Rural Action, Delta Land and Community, Inc., Future Harvest/CASA (Chesapeake Alliance for Sustainable Agriculture), Illinois Stewardship Alliance, Innovative Farmers of Ohio, Institute for Agriculture and Trade Policy, Iowa Environmental Council, Iowa Natural Heritage Foundation, Kansas Rural Center, Kerr Center for Sustainable Agriculture, Land Stewardship Project, Michael Fields Agricultural Institute, Michigan Integrated Farm and Food Systems (MIFFS), Michigan Land Use Institute, Midwest Organic and Sustainable Education Service (MOSES), The Minnesota Project, National Catholic Rural Life Conference, National Center for Appropriate Technology, Northern Plains Sustainable Agriculture Society, Ohio Ecological Food and Farm Association, Organic Farming Research Foundation, Pennsylvania Association for Sustainable Agriculture, and the Sierra Club Agriculture Committee.

Impervious Surface Limitations

According to statute, the purpose of the FRPP is to purchase conservation easements in order to protect topsoil by limiting nonagricultural uses of the land. In the preamble to the interim final rule, the agency notes a discrepancy between the agency and its FRPP partners over the issue of allowing development on land covered by an easement funded by the FRPP. Some partners wish to allow development in order to help preserve the viability of the agricultural operation or to protect open space. The agency correctly notes this is contrary to the clear language and intent

of the FRPP to prevent the conversion of farmland and the soil resource to development. The agency further states that it has attempted to find “common ground” (i.e., compromise) with partners over this issue by developing an impervious surface policy for FRPP easements.

Since 2003, the agency has allowed FRPP easements to contain “impervious surfaces, which includes residential buildings, agricultural buildings (with and without flooring), and paved areas, both within and outside the conservation easement’s building envelope(s)” not to exceed 2 percent of the total easement acreage. For easements less than 50 acres, one acre of impervious surface area has been permitted. Subsequently, the agency further weakened this compromise standard by allowing waivers to be granted by State Conservationists based on criteria developed in conjunction with State Technical Committees. The agency then developed a template to be used when developing criteria to waive the 2-percent limit. The template allows for a sliding scale for impervious surface limit of up to six percent if certain criteria are met. According to the template, farms are allowed up to 6 percent impervious surface coverage if they are located in a densely populated area, contain a large amount of open prime and important soil, and are less than 50 acres in size. The impervious surface limit applies to existing and new construction.

The agency has now amended the interim final rule to further weaken this evolving impervious surface policy by adding a new provision at paragraph 1491.22(i) that limits impervious surfaces to not more than two percent of the easement area, but allowing for waivers on a parcel-by-parcel basis up to 6 percent, but without the previous language limiting the exceptions to small farms of less than 50 acres in size located in densely populated areas. The agency argues that this new policy, despite being directly contradictory to the purposes of the authorizing language, is nonetheless required to provide “reasonable flexibility.”

SAC strongly objects to the waiver of the 2 percent limit on impervious surfaces within an FRPP easement, both as a USDA policy in the FRPP manual and its elevation to a regulation in the IFR. Given the high demands on limited FRPP funding, SAC sees no reason why the public should pay for up to 6 percent of an FRPP easement that is occupied by residential or other structures, paved roads, loading pads, subdivisions, and other impervious features on FRPP easements. The preamble to the IFR correctly identifies the absurd result of lifting the limitation, noting that a 1000 acre easement in the west could be occupied by up to 60 acres of developed land at taxpayer’s expense under a program that is intended to preserve soil!

We are also concerned that the regulatory provision on impervious surfaces omits important considerations, particularly the consideration of whether the activity on the impervious surface is at odds with, or in keeping with, the statutory purpose of the FRPP easement. There is nothing in the new language in the IFR which restricts the impervious surface to agricultural uses that are necessary to ensure the long-term protection of the soil quality of the FRPP easement or that even restrict the impervious surface to agricultural uses. Therefore, one scenario on a 100 acre farm could be a 6-acre parcel subdivided into tracts for 12 houses within a total FRPP easement of 100 acres - a not unlikely scenario in a region with in a densely populated area. The public should not be required to pay for land in a FRPP easement that is not dedicated to an agricultural use which will contribute to the primary purpose of the FRPP easement.

SAC also objects to a policy or regulation on impervious surfaces in FRPP easements that allows the inclusion of animal confinement facilities and waste storage and handling structures for industrialized concentrated animal feeding operations (CAFOs) in any FRPP easement. It appears that current USDA policy actually requires the inclusion of CAFO facilities within FRPP easements, even where the local government would prefer to exclude CAFOs. For example, the attached Memorandum from Jayne Miller, Community Services Administrator, Ann Arbor Michigan to Mayor and City Council, dated Oct. 4, 2005, indicates that in negotiating with USDA on an agreement for FRPP funding for the City to obtain development easements on four farms in the City's Green Belt, USDA informed the City that it would not be awarded the FRPP funding unless the City removed a restriction on CAFOs in the City's greenbelt ordinance. The memorandum notes that the buildings and associated area are limited to less than two percent of the easement. Now, in the IFR, USDA is paving the way for an even greater density of CAFOs within FRPP easements. The IFR's easement waiver provision appears to be tailored as yet another USDA funding scheme for the establishment of new and expanding CAFOs on relatively small acreages. We adamantly object. This is completely contrary to the letter and spirit of the FRPP authorization.

USDA has failed to effectively assess and monitor the environmental degradation arising from CAFO proliferation. In light of the continued and increasing public controversies over the siting and operation of industrialized animal production facilities, we recommend that USDA establish a clear mandate that an FRPP easement cannot include CAFO facilities. We are also dismayed that USDA promotes increased industrialization of FRPP easement and goes even further by imposing this policy as a condition for local governments and non-governmental partners to receive FRPP awards. SAC requests that USDA clarify whether it is a requirement of the FRPP that CAFO structures and other CAFO impervious surfaces be allowed on easements funded in part by the FRPP.

We recommend that the impervious surface section of the IFR be revoked and a new proposed rule on impervious surfaces be issued for public comment. Our strong preference would be for the easement payments to be limited to farmland with no impervious surfaces, consistent with the statute. If an exception is nonetheless going to be granted, we recommend that it adhere to the 2 percent impervious surface rule, with no waivers, but with the addition of a minimum and maximum (e.g., not less than 2 acres or greater 10 acres) so that small farms aren't unfairly restricted relative to larger farms, and that the exception does not get completely out of hand on larger farms. If the latter course is chosen, we recommend the addition of clear language limiting the impervious surfaces to agricultural uses.

If the agency refuses to reverse course on this section of the IFR, we fully intend to pursue legislative changes to the authorization to ensure that the policy is reversed and the program returned to its original purpose.

Eligibility of Forest Lands

The IFR increases the *national limitation* on forested land in an FRPP easement from one-half to two-thirds of the total easement acreage. USDA's rationale for this increase in forested acreage rests solely on the conclusion that the 50 percent limit unintentionally created an impediment to

enrolling land in the *Eastern* United States where forested acreage is an integral and supplemental part of a farming operation. SAC objects to the increase in the forested land limitation on a national basis. USDA has provided no justification for this increase in forested land outside of the Eastern U.S.

Even within the Eastern U.S., the analysis offered in the IFR preamble does not justify such a drastic change in the FRPP, from a farm and ranch land protection program to a forest land protection program. The preamble indicates that Eastern farmers are subdividing tracts or deforesting acres to offer land into the program. If USDA finds these actions to be detrimental to the FRPP or to the environment, then a better alternative solution would clearly be a provision making such land ineligible for the FRPP.

In addition, although the IFR preamble refers to the role of forest land in the protection of water quality as a reason for increasing the percent of forested land in FRPP easements, the IFR then allows pulpwood to be included within the forested acreage and also provides a definition of forest land that will allow the enrollment of acreage that is only 10 percent stocked with trees 13 feet or taller. These changes taken altogether appear to favor the enrollment of up to two-thirds of an FRPP easement in land unsuitable for agricultural purposes, with as little as ten percent of the land planted even with immature trees, which can then be logged out for pulpwood. This is hardly a formula for increased protection of water quality by forested lands.

We also point out that the USDA is making this change, which can significantly increase enrollment of non-agricultural land in the FRPP, in the face of a large unmet demand for enrollment of agricultural land in the FRPP.

Real Property Interest of the United States

SAC approves of the IFR's clarification that the United States is a grantee under the terms of the deed for an FRPP easement, with the right of enforcement contingent upon the failure of the grantee/partner to enforce the terms of the FRPP conservation easement. We agree with USDA that to be effective over the long-term, the U.S. government must have clear title and rights of enforcement over FRPP easements, both to step in if a grantee/partner can no longer enforce the easement and to prevent condemnation of FRPP easements by state and local governments without federal review of the circumstances of the condemnation.

Thank you for considering our comments. We hope that amendments to the IFR will be issued in the near future on impervious surfaces and on forested land.

Sincerely,

Martha Noble

Martha Noble
Senior Policy Associate
Sustainable Agriculture Coalition