

February 23, 2011

Mark Rose  
Farm and Ranchland Protection Program Manager,  
Easement Programs Division, Department of Agriculture  
Natural Resources Conservation Service  
Post Office Box 2890  
Washington, DC 20013

Submitted via email: [mark.rose@wdc.usda.gov](mailto:mark.rose@wdc.usda.gov)

RE: Comments on Final Rule for Farm and Ranch Lands Protection Program

Dear Mark,

The Land Trust Alliance truly appreciates the opportunity to comment on the certification portion of the final rule for the Farm and Ranch Lands Protection Program (§ 1491.4(d) through (f)). As a reminder of our past input, we are attaching our letter to NRCS on this matter from 2009.

It is obvious from the final rule that you and others have been doing a great deal of listening. We are grateful for the many times you have made yourself available to the Alliance and our many members for questions on this and other issues.

Before addressing the Alliance's thoughts on certification we would like to thank you for the significant changes that NRCS has made in the rule in other areas. We welcome the overall tenor of the rule and its recognition of the social benefits of farmland protection. It is very gratifying to see the value of working landscapes laid out in such a thoughtful and comprehensive manner in this rulemaking!

Following are some of the modifications and elements of the program that we feel will have an immediate and positive impact to FRPP, helping to achieve the long-term conservation benefits that NRCS desires:

- Broadening the purpose of the program to include rangeland, grassland, pastureland, forestland and other incidental land;
- Removal of public access under state criteria as a ranking factor for FRPP assistance;
- Willingness to develop appropriate limitations for on-farm energy production rather than strict prohibition;
- Allowing eligible entities to submit impervious surface waivers up to 10% to state conservationists;

- Shifting from federal purchase of easements to facilitating purchases by eligible entities;
- Clarification that a contingent right of enforcement is a condition placed upon an award of financial assistance and does not constitute a Federal acquisition;
- Allowing landowner donations to count toward acquisition of a conservation easement;
- Helping to facilitate conservation easement projects where an entity can temporarily purchase land in fee title and re-convey to a private landowner;
- Recognition of the need for flexibility in accepting parcels where some of the mineral rights have been severed;
- Standardizing appraisal requirements and requiring industry-approved appraisal methods (USPAP). It is our hope that this will aid the speedy closing of projects;
- The ability to substitute acres within a pending offer;
- The use of cooperative agreements to define the provisions required for successful completion of a conservation easement purchased with FRPP funds;
- Simplification of participation, and particularly, allowing entities to use their own easement templates as approved by the Secretary.

### **Certification**

It is easy to recognize and appreciate the efficiencies offered by the certification approach, which allows NRCS's partners greater flexibility and greater responsibility for carrying out the FRPP. Once this procedure is fully defined, it is certain to streamline the program—an outcome desired by all participants. Importantly, it does not preclude any eligible entity from applying for FRPP funding; certification merely guarantees a more independent and simplified transaction process for the certified entities.

**Accreditation:** Several years ago, the Land Trust Alliance created an accreditation program for land trusts, as an independent entity governed by a board of commissioners. The Land Trust Accreditation Commission and its staff provide a thorough review of the policies, records, and systems of land trusts, awarding accreditation to those organizations it finds are meeting the requirements of Land Trust Standards and Practices.

The Alliance's existing accreditation process will verify a land trust's ability and record in defense and stewardship. The accreditation commission staff spends approximately 85 hours per organization in reviewing their policies and records to ensure they have good, reliable systems for checking title, for drafting, amending and enforcing conservation easements, for reviewing appraisals, for annual monitoring, and for collecting baseline data; and that they have the resources needed for stewardship, defense and continued operations. The sixteen commissioners, who are the decision makers, have a collective total of approximately 280 years of experience in conservation. (Please see attached list.)

There are now 130 accredited land trusts (please see attached list.) Forty one of them hold FRPP funded easements, and more of the 130 land trusts who hold FRPP easements are in the process of getting accredited. Certainly this would address NRCS's concern for organizational

quality and past performance, while setting the stage for increased simplification and helping to ensure a solid track record of completed projects that we can all take pride in.

You can view the 2009 annual report of the Land Trust Accreditation Commission at [www.landtrustaccreditation.org/downloads/AnnualReport2009.pdf](http://www.landtrustaccreditation.org/downloads/AnnualReport2009.pdf). The accreditation website is [www.landtrustaccreditation.org/](http://www.landtrustaccreditation.org/).

As NRCS advances its final definition of certification, we ask you to consider the various benefits of Colorado's example. Colorado has instituted a certification program for land trusts holding easements that benefit from its state tax credit for conservation donations. The statute setting up the certification program (C.R.S. 12-61-720(5)) provides that *"The certification program may contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry."* ([www.state.co.us/gov\\_dir/leg\\_dir/olls/sl2008a/sl\\_448.htm](http://www.state.co.us/gov_dir/leg_dir/olls/sl2008a/sl_448.htm))

This was done specifically to take advantage of the Land Trust Accreditation Commission's work, and has been very successful for the state. We suggest that NRCS take this same approach. We believe accreditation can substitute for virtually all of the requirements laid out in the proposed rule, with the possible exception of requiring specific commitments to farmland conservation.

**Appraisals.** We have received many comments from our members regarding the backlog of appraisal reviews and the long periods of time required to close these transactions. We know that you are aware of this and are grateful that NRCS is working to resolve these issues by allowing for multiple outside contractors to handle appraisal reviews. Those entities that do not receive certification right away will hopefully be the beneficiaries of a more efficient process and not be subject to the same delays that have plagued the program in the past.

**"Dedicated funds."** We believe that accredited land trusts need not be subject to a separate standard for dedicated funds. For other partners, however, we would like clarification on the specific amount being required for the dedicated fund (page 4033; 2<sup>nd</sup> column; last paragraph). The use of 'endowment' here is potentially confusing, while it is often used generically to describe a dedicated fund, it can have a specific legal meaning pertaining to charitable gifts that may not be the best choice in this setting. We would recommend that you use the term "dedicated fund" exclusively.

The proposed rule is a bit unclear on its dedicated funds requirement. Is NRCS requiring \$50,000 per easement – or per organization? Is it requiring \$10,000 per FRPP easement, or \$10,000 for each easement held by the organization, whether FRPP funded or not? We would urge that the rule not be interpreted as requiring a segregated account for each easement – that would be impractical. In fact, we would argue strongly that a single dedicated account would suffice for both stewardship/monitoring and defense.

The Alliance's guidance on Land Trust Standards and Practices suggests a dedicated amount of \$50,000 for defense of up to 15 easements (plus \$1,500 – 3,000 per additional easement.)

Standards and Practices also provide guidance for a minimum of 75% of stewardship/monitoring costs covered by dedicated funds and suggests roughly \$3,500 per easement. In comparison, the rule's proposed requirement of \$10,000 per easement seems quite high.

**Experience.** We believe that a numerical minimum of easements held should be waived for accredited land trusts, who have demonstrated that they have the systems needed to efficiently handle FRPP easements. But if you do require a certain number of transactions, we hope that you will count not just easements held by an eligible entity, but also those for which the eligible entity contributed the majority of the transactional work, even when they did not end up holding the easement. Many of our members provide just such services for state or local easement programs, which end up holding the easements.

As we look toward the 2012 Farm Bill, we would like to offer our 'wish list' regarding the next version of the Farm and Ranchland Protection Program:

- A fully funded FRPP program that will continue to inspire strategic conservation on a landscape scale;
- NRCS support for transaction costs related to projects. Land trusts are nonprofit organizations that exist specifically for the purpose of the protection of land defined by their missions; each time they must stop forward progress to raise additional funds for these related expenses, that much more ground goes unprotected;
- In the same vein, reduction of non-federal match and recognition of landowner donation of up to 50% of the value of the conservation easement. Many land trusts work in regions where there are few or no available sources of matching funds. Raising this limit would enable the protection of large productive landscapes that are daily falling victim to urban sprawl;
- Reauthorization of using Department of Defense funding as a match for FRPP funds. These projects, now discontinued, have been very valuable contributors to both conservation and the national defense.

Thank you again for allowing us to comment on the certification portion of the final rule for the Farm and Ranch Land Protection Program. We stand ready to help in any way we can and hope that you will continue to look on the Land Trust Alliance as a trusted resource as you finalize the requirements for this very valuable and effective source of conservation funding.

Regards,

Lynne Sherrod  
Western Policy Manager

Russell Shay  
Director of Public Policy

Attachments (3)