

Note that the cash shares for the cooperating entity and FRPP are identical from zero donation to a \$25,000 (25 percent) donation level. At donation levels greater than \$25,000 the cooperating entity contributions are greater with the proposed rule. In this example, if the landowner makes a \$40,000 donation then the cash requirement is \$5,000 greater in the proposed rule scenario as compared to the suggested change by the land trust community.

After considering these comments, NRCS has decided to retain the same funding options albeit with some clarification. NRCS believes that the final rule's language supports large bargain sales by the landowner and requires only that in these cases, the entity match NRCS' contribution dollar-for-dollar. Assuming a \$100,000 easement, if the landowner chooses to donate 70 percent of the appraised fair market value, the actual easement purchase price would be \$30,000. In this case, NRCS and the cooperating entity both contribute \$15,000. By providing the option for the entity to choose either 25 percent of the appraised fair market value or 50 percent of the purchase price, NRCS is accommodating the cooperating entities desire to take advantage of bargain sales and at the same time, ensuring that the Federal investment is secured with some contribution by the cooperating entity. Consequently, the final rule adopts the language of the proposed rule.

Several respondents suggested that NRCS take into account donations of other lands by an entity, as a matching offer. NRCS interprets the statute to mean that an entity's contribution pertains specifically to the parcel of land, which is subject to a pending offer in which the Secretary is purchasing an interest. Using land as match for the purchase of such land is not within the statutory authority of the program.

Five respondents recommended that to the extent that they are ordinary, necessary and reasonable, administrative costs associated with NRCS requirements be reimbursable with FRPP funds, or at the very least count towards the entity's share. In accordance with the statute that authorizes NRCS to cost share only the purchase of a property interest, NRCS does not reimburse a cooperating entity's easement costs associated with easement acquisitions, nor do these easement acquisition costs count towards an entity's share of the contribution. One respondent requested that NRCS insert in the final rule that easement administrative and transaction

costs will not be paid for using FRPP funds. NRCS agrees with this recommendation and has inserted this policy into the final rule.

One respondent requested that NRCS provide the option to the entity to issue landowner payments in installments. NRCS concurs with this recommendation. However, due to the complexity of the payment process, will address this issue in its policy manual, CPM part 519.

#### *Section 1491.22 Conservation Easement Deeds*

One respondent requested a clear articulation of FRPP's goals and objectives in Section 1491.22(a). NRCS agrees with the respondent and has inserted clauses under Section 1491.22(a) to more fully describe the goals and objectives of FRPP. As set forth in FRPP's authorizing legislation, the purpose of FRPP is to purchase conservation easements for the purpose of protecting topsoil by limiting nonagricultural uses of the land. With this in mind, NRCS has inserted the following goals into section 1491.22: (i) To protect the topsoil from conversion to nonagricultural uses; and (ii) to ensure that the agricultural capacity of the soils remains viable for future generations.

Several other respondents requested specifics on what is or should be allowed in FRPP. Two respondents stated that easements associated with FRPP should clearly provide for continued, active management of the farm, ranch and associated forest land. One respondent stated every conservation easement deed should require a farm succession plan. While NRCS encourages that these farms be actively farmed for perpetuity, the agency also recognizes that FRPP's authority is limited to protecting the soils, not ensuring that the farm or ranch be actively farmed for perpetuity, nor does the agency believe it is practicable to do so.

One of these respondents also asked that NRCS consider forestry as an agricultural use, making it clear that the conversion of farm to forest does not constitute a conversion to non-agricultural use. NRCS agrees with this response; however, NRCS believes that the majority of farms and ranches accepted into the program will not be converted into forestland because the quality of farm and ranch land that are accepted into the program would make conversion to forest land economically infeasible. Moreover, NRCS believes that the FRPP ranking criteria favor parcels that will remain agriculturally viable in the future. NRCS

acknowledges that some parcels enrolled under FRPP may be converted to forest land in the future. Although the agency has attempted to structure the program so that the primary focus of the program is to protect high quality farmland that will be actively cropped or grazed, NRCS believes that it lacks the authority to mandate that farms and ranches remain actively farmed in perpetuity. NRCS believes that its authority extends only to ensure that the topsoil protected under FRPP easements is not converted to nonagricultural uses and that the agricultural capacity of the soils remains viable for future generations. Under this rationale, NRCS believes that the conversion of farm and ranch land to forest land retains the agricultural viability of the soils and that if future generations deemed it appropriate, the forest acreage could be harvested and the land could be tilled or grazed.

One respondent requested that NRCS clarify its association with other conservation programs. As previously discussed, NRCS encourages landowners to utilize other conservation programs to protect natural resources on FRPP land. Landowners who enroll in FRPP are eligible to participate in USDA's cost share programs, including the Agricultural Management Assistance Program (AMA), Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP), and the long-term contract options under the Wetlands Reserve Program (WRP) and Conservation Reserve and Enhancement Program (CREP). However, NRCS believes that WRP 30-year and permanent easements, as well as CREP permanent easements which restore wetlands and limit agricultural uses, may undermine FRPP goals and objectives to protect the agricultural viability of topsoil for future generations. For this reason as well as the desire to maximize Federal dollars, NRCS has chosen to exclude WRP and CREP acreage from FRPP easements. For example, a landowner who wishes to enroll in both programs can continue to do so; however, the land under WRP easement must border the FRPP easement—the same acreage cannot be enrolled under both easements.

One respondent questioned the language in 1491.22(c) that required a review of the conservation easement by NRCS and the Office of General Counsel. The respondent argued that there is "no legal standing by the Federal government as Grantee." NRCS and the Office of General Counsel (OGC) refer once again to the statute that instructs the Secretary, acting through