



Forest  
LANDOWNERS

Promoting Private Forests

May 12, 2020

The Honorable Sonny Perdue  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue S.W.  
Washington, D.C. 20250

Re: Regional Conservation Partnership Program Interim Final Rule Comments  
7 CFR Part 1464; Docket ID NRCS-2019-0012; RIN 0578-AA70  
Submitted electronically

Dear Secretary Perdue:

Forest Landowners Association (FLA) is grateful for the opportunity to provide the following comments on the Regional Conservation Partnership Program (RCP) Interim Final Rule, 7 CFR Part 1464; Docket ID NRCS-2019-0012; RIN 0578-AA70.

The Forest Landowners Association is an association of landowners who are the stewards of America's private forests. FLA represents over 5,000 members, representing over 50 million acres of forest in 45 states. Our members hold predominantly large tracts of forest and manage their land with a sustainable approach, ensuring the prosperity of their forests for future generations. Our constituents range from large forest businesses whose land has been in their families for generations to those who have become forest landowners because they view forests as a long-term investment. FLA is committed to preserving America's tradition of private forest ownership, promoting the importance of forest resources, and securing a legacy that can be passed to the next generation.

Large, privately owned forests are among the most important uses of rural land both economically and environmentally. These ownerships represent uninterrupted tracts of contiguous forest habitat. Our purpose is to advocate for policies supporting those who own and manage their working forests with a holistic approach – financially, environmentally, and socially. It is in that regard that we advocate for forest landowners to be acknowledged for the economic and environmental contributions their working forests make to society.

## **Background**

Through the 2014 Farm Bill, Congress created RCPP as a partnership program giving the National Resource Conservation Service (NRCS) the authority to implement funding for covered programs totaling several hundred million dollars per year. For the funding of conservation easements, NRCS implemented the RCPP program through the Healthy Forest Reserve Program (HFRP) and the Agricultural Conservation Easement Program (ACEP). At that time, NRCS did not promulgate a RCPP rule, instead utilizing the rules of the covered program. Additionally, the Chief had the authority to waive non-statutory rules.

Many successful RCPP projects were implemented under this framework, funding conservation easements with private forest landowners including FLA members such as Resource Management Service's (RMS) Coastal Headwaters Forest – Longleaf Restoration and Restoration Project. RMS has set a laudable example for how to achieve conservation successes under RCPP as a timber investment management organization (TIMO), and FLA is working to replicate this success with large family forest landowners (100,000+ acres) who own and manage working forests that provide environmental and economic benefits to their communities.

During the 2018 Farm Bill, Congress authorized RCPP as a stand-alone program, meaning that NRCS would no longer implement the RCPP funding through covered programs. NRCS issued an interim rule for RCPP on February 13, 2020, and invited comments from stakeholders. While the rule does not provide many specifics on conservation easement implementation, the FY19 application guidance included much stricter rules for easements than prior RCPP cycles, including less flexibility for providing match, narrower easement templates, and an overly burdensome adjusted gross income (AGI) waiver process. The FY19 RCPP application guidance regrettably made it much more difficult for forest landowners to successfully plan and implement an RCPP project than previous years.

FLA has been working with our conservation partners and several large family forest landowners within our membership to plan large-scale longleaf pine restoration projects in the southeastern United States. However, the rule changes introduced with the FY19 application guidance have changed the program's requirements so drastically as to prevent us from even applying for RCPP funding. Based on these experiences, we offer the comments below on the RCPP interim rule. While many specific terms for the program are not included in the interim rule, we respectfully submit the following comments based on the FY19 RCPP Application for Public Funding (APF) Guidance, as RCPP prepares a final rule and drafts future Fiscal Year APF Guidance.

## **US-Held Easements**

- 1) ***For US-held easements, we strongly urge the NRCS to provide 100 percent of the easement value for any project.*** Private forest landowners wishing to engage in large-scale conservation projects must have access to solutions that allow them to keep their working lands working while providing environmental benefits. To achieve this goal, there must be easement structures that recognize the full

appraised value of the property that is subject to the easement. Capping funds to a lower percentage for working forests is a restriction on match flexibility that is deterring many landowners from even applying for RCPP funding.

Working lands are at the heart of NRCS's mission, and we believe working forests should not be penalized by these caps. Being able to actively manage forestland is essential and enables many producers to be able to enroll in RCPP. Working forests provide important economic benefits to local and rural communities while providing conservation benefits that are ensured by appropriate easement terms.

Under previous guidance, the HFRP rules allowed RCPP funds to cover 100 percent of the easement for working forests. This allowed partners and landowners to provide contributions via restoration, forest management, and other conservation measures in the project area. Many forest landowners do not come to the table with sufficient cash-on-hand to provide match for a large-scale conservation project; but they do come to the table with tens of thousands of acres of working lands demonstrating high conservation value – along with the expertise and capacity to manage those lands. By providing 100 percent coverage of the easement, these funds are effectively leveraged to achieve greater conservation goals.

We recommend that the NRCS return to the HFRP leverage model. Taking the leverage model away will exclude many large forest landowners from participation in the program, effectively preventing future conservation opportunities on priority lands. We strongly urge future guidance to allow all working land easements to be eligible for 100 percent cost share coverage.

- 2) ***We urge NRCS to provide more flexible easement deed terms – and that deed terms NOT be linked to the level of funding provided for easements.*** Considering the wide variety of ownership structures and legal flexibility across the many types of private forest landowners, we urge NRCS to provide greater flexibility in easement deed terms. We believe that high-, moderate-, and low-level restriction easement deed models will not provide an appropriate level of flexibility and customization to accommodate all landowners.

Moreover, the appraised value of the easement will depend on the easement restrictions. Generally, the stricter the easement terms, the higher the valuation will be. By using a sliding scale for the level of cost-share that is based on the strictness of the easement terms, NRCS is effectively deterring many landowners from participating in collaborative conservation, as many ownerships with high-priority conservation lands may be unwilling or unable to accept strict easement terms in order to receive a higher level of cost-share. Given NRCS's goal of promoting both conservation *and* working lands, it should not create a policy that asks working forests to choose between shutting down active lands or receiving the full value of an easement. If NRCS prioritizes the enrollment of high-value conservation lands,

then it should also prioritize the provision of cost-share up to 100 percent of the value of these easements. By tying the cost-share percentage to the type of easement deed terms, NRCS is unnecessarily limiting opportunities to achieve successes by working with landowners with high-priority conservation lands.

- 3) ***We recommend that NRCS allow producer and partner in-kind contributions to count toward the project contribution match.*** The FY19 guidance for RCPP required match to be made in cash, marking a significant reversal from previous cycles where in-kind contributions were counted toward the project contribution match. As mentioned above, many forest landowners do not often come to a conservation project with large amounts of cash contributions on hand. Rather they bring value to the table through their high-value conservation lands, their expertise, and their ability to implement restoration management activities.

Providing in-kind contribution flexibility is crucial if conservation is to occur at scale with large forest landowners as partners. In-kind contributions such as land management, improvement, restoration activities, and landowner donations or bargain sales are what made past RCPP projects involving forest habitat restoration so very successful. However, the FY19 guidance has prohibited these in-kind contributions. We recommend at a minimum that future RCPP guidance include the following forms of in-kind contributions:

- a. Landowner restoration, improvements, and land management – These are highly valuable contributions that complement and ensure the success of a conservation easement investment. NRCS should incentivize these activities by allowing them to count as match, thus leveraging the funds that support the easement.
- b. Landowner donations or “bargain sales” – These contributions represent a longstanding conservation easement funding tool that is used nearly ubiquitously across conservation funding programs. NRCS has traditionally allowed landowner donations as contributions for easements, and we urge NRCS not to move backwards when it comes to the success of this widely accepted and highly effective practice.
- c. Other partner area conservation deals and practices – These contributions have counted for RCPP projects in the past. This allows some partners – such as states – to provide in-kind match through funding another conservation easement, even though they are not permitted to share title through cash contributions. These contributions can also help leverage the impact of the easement through restoring other lands in the area, thus expanding the effects and ensuring the success of the easement investment.

#### **Entity-Held Easements**

***We urge the NRCS to allow non-federal cost-share to include (at a minimum) the same options as the current Agricultural Land Easement (ALE) program.*** Because of its flexible nature, the RCPP program should have at least the same cost-share options as ALE. Under

RCPP, entity-held easements should not require cash as a portion of the non-federal cost share. Rather, RCPP should follow the model of the current ALE program, which allows the 50 percent required non-federal cost-share to be provided via cash, landowner bargain sale donation, transaction costs, and/or other costs.

### **Adjusted Gross Income (AGI) Waivers**

***We recommend that the process for AGI waivers be changed to better accommodate complex ownership structures.*** To achieve large-scale habitat restoration, many partners must seek an AGI waiver. The interim rule requires that “producers operating as a legal entity or joint operation, provide a list of all members of the legal entity or joint operation and embedded entities along with each members’ tax identification numbers and percentage interest in the entity.” (§ 1464.5(c)(5)). Unfortunately, the current AGI determination process often includes many prohibitive hurdles for producers. In particular, forestlands with complex land ownership structures are often prohibited from participation in RCPP conservation programs because one or more of the many owners or entities is unwilling or unable to provide the financial information required under the current processes.

FLA’s members range from real estate investment trusts (REITs) to timber investment management organizations (TIMOs) to large family ownerships. Each of these types of ownerships presents its own set of obstacles to overcome in meeting the current AGI waiver requirements. For example, even a large family forest may have a highly complex ownership structure, with multiple generations represented among the co-owners of the land. Some of our members have over 100 family members who jointly own and make decisions about their family forestland. Requiring each entity and individual under the umbrella ownership of a parcel of land to produce tax and financial documentation is overly burdensome and prevents large-scale conservation from being achieved.

Landowners who are willing to enroll in a conservation easement may not be able to provide all of the Farm Service Agency (FSA) and NRCS documentation currently required. These policies have the ultimate effect of deterring more complex ownership structures from participating in RCPP conservation programs. Moreover, the ownership structures targeted by this policy are precisely the ones that have the ability to achieve conservation at scale across the forest landscape. Greater efficiency and scale in conservation outcomes can be achieved by removing overly burdensome AGI waiver requirements for forest landowners.

### **RCPP Implementation Flexibility**

***Finally, RCPP implementation flexibility is critical to efficiently and effectively achieving conservation goals at scale.*** FLA represents a broad and diverse spectrum of forest landowners. Different types of landowners have different resources, needs, and concerns. There is no “one-size-fits-all” approach to partnering with forest landowners to achieve conservation outcomes. Therefore, we commend the NRCS for allowing RCPP implementation to proceed in a flexible manner over the past several years. The former

RCPP allowed an “adjustment of terms” process so that partners could work efficiently over time to adjust to changing conditions. We encourage NRCS to continue this policy under the new rule. Each project has a complex stepwise process for its unique implementation, and flexibility is needed when unexpected obstacles arise. We encourage NRCS to retain and improve the process for producers to request flexibility in implementation steps when working to achieve RCPP goals.

**Conclusion**

We appreciate the opportunity to provide insight into how the proposed interim rule for RCPP will impact forest landowners and their ability to restore habitat on their lands. We see promising opportunities to foster partnerships between our landowners and the NRCS through the RCPP program to achieve conservation at scale on private forestlands. With that goal in mind, we thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Lauren K. Ward". The signature is written in black ink and is positioned below the word "Sincerely,".

Lauren K. Ward, Ph.D., J.D.  
Director of Stewardship Initiatives  
Forest Landowners Association