



## **CRS Report for Congress**

# **Farm Protection Program: Status and Current Issues**

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### **Summary**

The Farm Protection Program (FPP) is a voluntary federal program that provides funding to buy conservation easements from farmers and ranchers in an effort to limit conversion of farmland to nonagricultural uses. FPP provides matching funds to state and local governments and private organizations working with established farm and ranch land protection programs, in partnership with the U.S. Department of Agriculture (USDA). Since 1996, the program has protected more than 449,000 acres throughout the United States. Authority for FPP expires September 30, 2007. Although demand to participate in FPP continues to grow, exceeding available funding, there are concerns about how the program has been implemented. Among these concerns are land use limitations and the federal government's "contingent right" on land under FPP-funded easements. During the 109<sup>th</sup> Congress, several bills were introduced to amend the FPP statute and to raise program funding, but legislation was not enacted. Similar legislation may be considered in the 110<sup>th</sup> Congress and in the anticipated 2007 farm bill debate. This report will be updated as events warrant.

### **Background**

The Farm Protection Program (FPP), also called the Farm and Ranch Land Protection Program or FRPP, is a voluntary federal program that provides funding toward the purchase of conservation easements from farmers and ranchers to limit conversion of farmland to nonagricultural uses. Under FPP, a landowner sells the development rights to his/her property, thereby limiting certain types of uses or preventing development from taking place on the land, while still allowing the owner to retain other ownership rights, including the right to farm. The program provides matching funds to state, tribal, or local governments and nongovernmental organizations working with established farm and ranch land protection programs, in partnership with the U.S. Department of Agriculture (USDA). The program is managed by USDA's Natural Resources Conservation Service (NRCS). FPP was initially authorized in Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104-127) and was reauthorized through FY2007 and amended in Section 2503 of the Farm Security and Rural Investment Act of

2002 (P.L. 107-171, 2002 farm bill).<sup>1</sup> Amendments to FPP in the 2002 farm bill both raised authorized funding levels and expanded eligibility under the program.

**Eligibility.** The original FPP statute identifies eligible lands under the program as “land with prime, unique or other productive soil.”<sup>2</sup> The 2002 farm bill expanded the types of eligible land under the program to include cropland, rangeland, grassland, pastureland, and forestland that is part of an agricultural operation, along with other types of land resources. The 2002 farm bill also expanded the types of entities eligible to participate in the program to include Indian tribes and qualified nonprofit organizations operated for conservation purposes. To qualify under FPP, as outlined by USDA,<sup>3</sup> the land offered must be part or all of a farm or ranch and must (1) contain prime, unique, or other productive soil or historical or archaeological resources; (2) be included in a pending offer from a state, tribal, or local government or nongovernmental organization’s farmland protection program; (3) be privately owned; (4) be covered by a conservation plan for any highly erodible land; (5) be large enough to sustain agricultural production; (6) be accessible to markets for what the land produces; (7) be surrounded by parcels of land that can support long-term agricultural production; and (8) be owned by an individual or entity that does not exceed the adjusted gross income (AGI) limitation.<sup>4</sup> Land that cannot be converted to nonagricultural uses because of existing deed restrictions or other legal constraints is not eligible for FPP.

**Other Requirements.** Two main issue areas under the program have raised concerns by major stakeholders, including land use limitations and requirements pertaining to the federal government’s contingent right under the program. Land use limitations on farm and ranch land under FPP-funded easements extend beyond the basic restriction against nonagricultural development. Construction inside the easement area is generally prohibited and any new farm structures need NRCS approval. Structures including phone towers and wind turbines are generally considered nonagricultural and would not be allowed. Subdivision of the land is prohibited. Impervious surfaces are also limited inside the easement area and may not exceed 2% of the FPP easement area, as further promulgated by USDA in a July 2006 rulemaking.<sup>5</sup> Such restrictions are generally regarded by USDA as consistent with language in the FPP statute describing the program “for the purpose of protecting topsoil by limiting nonagricultural uses of the land,” and as consistent with USDA’s characterization of FPP as an “agricultural soils protection”

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<sup>1</sup> Authorized as FPP in the Farm Security and Rural Investment Act of 2002, and renamed FRPP by USDA to distinguish it from the old program. The name has not been changed in statute.

<sup>2</sup> 16 U.S.C. § 3838i (a).

<sup>3</sup> USDA, NRCS, “Farm Bill 2002, Farm and Ranch Lands Protection Program,” September 2004, at [<http://www.nrcs.usda.gov/PROGRAMS/farmland/2002/pdf/FRPPFct.pdf>].

<sup>4</sup> Applies to individuals or entities with an average AGI exceeding \$2.5 million for the three tax years immediately preceding the year the contract is approved. Exemptions apply in cases where 75% of the AGI is derived from farming, ranching, or forestry operations.

<sup>5</sup> 71 *Federal Register* 42567, July 27, 2006; NRCS, *FRPP Manual*, CPM Part 519, June 2003. Impervious surfaces include residential and agricultural buildings (with and without flooring) and paved areas both inside and outside the conservation easement’s building envelopes.

program.<sup>6</sup> However, such land use limitations are often perceived by landowners as creating additional and, in some cases, conflicting restrictions to easement terms already developed and used by some established state, local and private protection programs.<sup>7</sup> A 2004 informal survey of Northeast and mid-Atlantic state and local farmland protection agencies, conducted by the American Farmland Trust (AFT), shows that states use a variety of strategies to manage new construction on protected lands. Some states already have specific policies regarding impervious surfaces.<sup>8</sup> All of the agencies surveyed by AFT expressed some concern about USDA's 2% impervious surface limit; respondents in Pennsylvania claimed the 2% limit may affect future FPP participation in that state. Public comments submitted to USDA show that some conservation organizations, including the New Jersey Conservation Foundation and The Nature Conservancy, continue to support limiting the level of impervious surfaces on FPP-funded easements.

Language in the FPP statute instructing NRCS to "purchase conservation easements or other interests in eligible lands"<sup>9</sup> has been interpreted to mean that the federal government retains a "contingent right" in FPP-funded conservation easements. USDA clarified this position in a July 2006 rulemaking, identifying the federal government as a grantee (co-holder) on FPP-funded easements and outlining the need for possible requirements including additional easement and title review and indemnification for federal acquisition of real property.<sup>10</sup> To date, NRCS has not exercised its enforcement rights or taken title to any FPP lands. However, these requirements have been perceived by some as adding levels of bureaucracy and burdensome administrative requirements, which may discourage some farmers from participating in FPP.<sup>11</sup>

**Funding.** Before 2002, authorized funding for the program totaled \$35 million for the purchase of conservation easements on 170,000-340,000 acres. The 2002 farm bill authorized funding for FPP as follows: \$50 million in FY2002, \$100 million in FY2003, \$125 million each in FY2004 and FY2005, \$100 million in FY2006, and \$97 million in FY2007. FPP is one of the mandatory spending programs that is funded under the borrowing authority of USDA's Commodity Credit Corporation and is not subject to annual appropriations. However, in recent years, annual agriculture appropriations acts have included language limiting FPP spending to below the authorized amounts.<sup>12</sup> Actual spending for FPP totaled \$112 million in FY2005 and \$74 million in FY2006.

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<sup>6</sup> 16 U.S.C. § 3838i (a); 71 *Federal Register* 42567, July 27, 2006. In the notice, USDA states that "conversion of the soils conflicts with the clear purpose of the statute."

<sup>7</sup> CRS staff communication with AFT, Dec. 2006; AFT, "Farm and Ranch Lands Protection Program," [<http://www.farmland.org/programs/campaign/newpolicyrecommendations.asp>].

<sup>8</sup> AFT, "Survey of Northeast and Mid-Atlantic State and Local Farmland Protection Programs' Impervious Surface and Construction Policies." Survey based on 12 state/local organizations.

<sup>9</sup> 16 U.S.C. § 3838i (a).

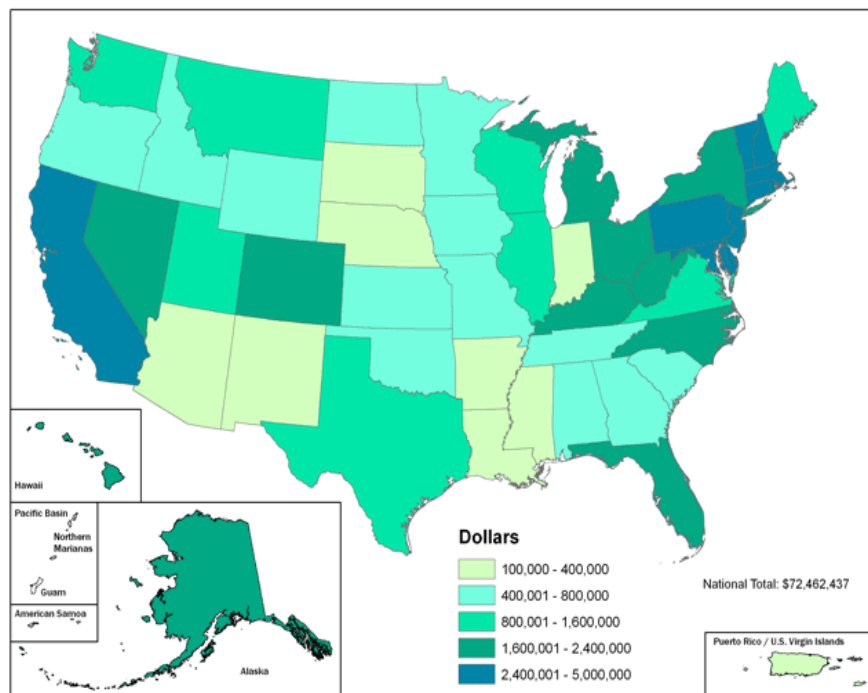
<sup>10</sup> 71 *Federal Register* 42567, July 27, 2006. USDA regards this interpretation as consistent with FPP's statutory authority and the Department of Justice's Title Standards.

<sup>11</sup> CRS staff communication with AFT, Dec. 2006; AFT, "Farm and Ranch Lands Protection Program," [<http://www.farmland.org/programs/campaign/newpolicyrecommendations.asp>].

<sup>12</sup> See also CRS Report RS22243, *Mandatory Funding for Agriculture Conservation Programs*, by Jeffrey Zinn.

**Program Costs and Benefits.** Federal outlays for FPP have totaled \$454 million over the past decade. This has paid for FPP easements on approximately 449,000 acres on 2,290 farms in all states, except Mississippi. The total cumulative easement value of this land is estimated at \$1.1 billion.<sup>13</sup> States with the greatest overall FPP spending are Maryland (\$30 million), New Jersey (\$27 million), Pennsylvania (\$26 million), California (\$22 million), and Massachusetts (\$21 million).<sup>14</sup> **Figure 1** shows FY2006 allocations by state and illustrates that most FPP funds are allocated among the northeastern states and California, which are states with the oldest and most active programs. Among the reasons why some states may have more limited participation are lack of a qualified state conservation program; difficulty obtaining matching funds; less experience with, acceptance of, or interest in efforts to protect farmland using easements; perceived burdensome administrative requirements and restrictive land use limitations; and a backlog of unfunded applications under current funding levels.

**Figure 1. FY2006 FPP Allocations to States**



**Source:** USDA, NRCS, at [<http://www.nrcs.usda.gov/programs/frpp/>].

A survey of landowners participating in FPP, conducted by the University of Nebraska,<sup>15</sup> shows a high level of satisfaction among current program participants, most of whom have continued to farm on their land. The survey shows that 97% of surveyed landowners have at least part of their FPP land in agricultural production. Roughly half

<sup>13</sup> USDA, "Farm Bill Forum: Farm and Ranch Lands Preservation," March 2006, at [[http://www.usda.gov/documents/FARM\\_AND\\_RANCH\\_LANDS\\_PRESERVATION.pdf](http://www.usda.gov/documents/FARM_AND_RANCH_LANDS_PRESERVATION.pdf)].

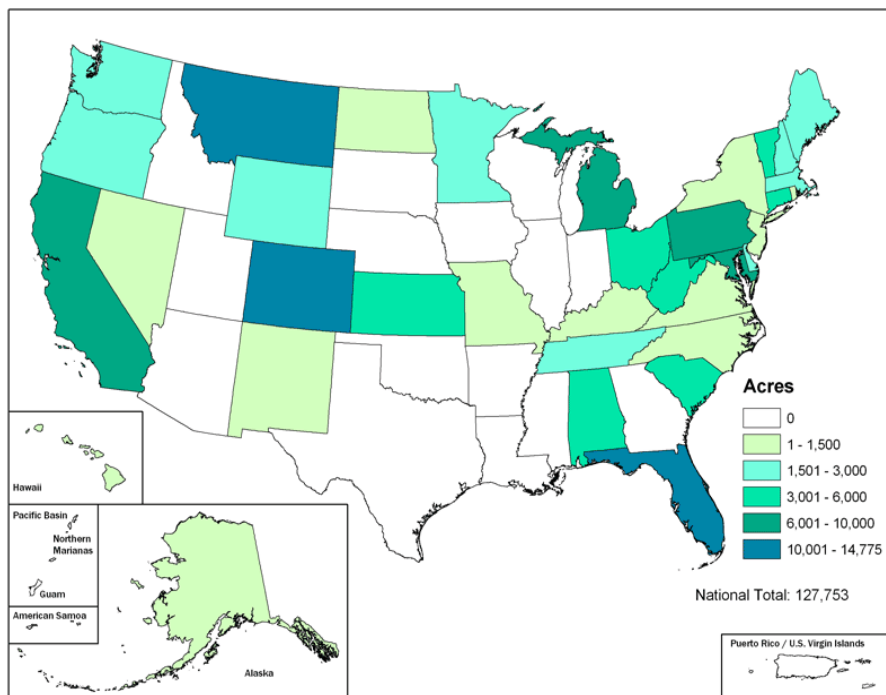
<sup>14</sup> AFT, "Federal FRPP Allocations," October 2006, at [[http://www.farmlandinfo.org/documents/31159/FRPP\\_table\\_11-06.pdf](http://www.farmlandinfo.org/documents/31159/FRPP_table_11-06.pdf)]. Data for 1996-2006.

<sup>15</sup> J. D. Esseks, J. M. Nelson, and M. E. Stroe, *Evaluation of USDA's Farm and Ranch Lands Protection Program*, University of Nebraska, [<http://www.aftresearch.org/current/results/detail.php?id=170>]. Survey of 422 landowners interviewed June-December 2005 (73% response rate).

of those surveyed were smaller-sized farms with reported total gross farm sales under \$100,000 per year. The survey shows that nearly three-fourths of surveyed owners either believe they have “definitely” made the right decision to participate in the program or would recommend FPP “without reservations” to other landowners.

USDA reports that demand for the program exceeds available funding by about 300%, based on the number of unfunded applications. In 2005, there were 542 unfunded applications for FPP easements, covering about 127,800 acres at an estimated federal cost of \$263 million. This backlog is up from 2004, when there were 216 unfunded applications covering about 48,000 acres at a cost of \$101 million. In 2005, the number of unfunded FPP acres exceeded 10,000 acres each in Montana, Florida, and Colorado (see **Figure 2**). States with the most unfunded FPP requests were Pennsylvania, South Carolina, Connecticut, West Virginia, and Vermont.

**Figure 2. FY2005 FPP Unfunded Applications (acres)**



**Source:** USDA, NRCS [<http://www.nrcs.usda.gov/programs/frpp/>].

The University of Nebraska survey also gives some indication that FPP may be achieving its intended goal of limiting conversion of farmland to nonagricultural uses. Among those surveyed, 56% reported that their FPP land would have been vulnerable to development within a year of closing on the easement. About 34% of those surveyed received offers to sell their land within a year of closing on the easement; 36% report their land is located within one-half mile of a public sewer or water line, which could have facilitated conversion of the land to nonagricultural uses.

## Issues for Congress

Despite a growing backlog of potential FPP participants and a high level of satisfaction among current program participants, there are still certain concerns about program implementation, particularly following the 2002 farm bill with respect to

USDA's policy manuals and rulemaking documents. For the 2007 farm bill debate, AFT and the National Association of State Departments of Agriculture (NASDA) are recommending further statutory changes to FPP, in part to address concerns about current land use limitations and the federal government's property interest on FPP-funded easements. AFT and NASDA also recommend a threefold increase in funding to \$300 million annually to expand the program and address the backlog of unfunded applications.<sup>16</sup>

The principal program change recommended by AFT and NASDA is to establish a block grant program for "qualified state or local entities." They define such entities as having a well-established record working with conservation easements (at least three years of operation and holding easements on at least 10 properties), the capacity to monitor and enforce these easements, and adequate financial resources. For non-qualified entities, the program would operate as under current law. NASDA's proposal currently recommends that 80% of funding be distributed to qualified entities; AFT's proposal does not set a minimum or maximum percentage. Current land use restrictions would be further addressed in recommended changes authorizing state and local entities to "determine their own criteria and priorities" and to "use their own terms and conditions" for conservation easements under FPP, thus deferring such decisions to the state and local level. USDA's role as a grantee (co-holder) would be further addressed by adding statutory language stating that the federal government would not hold an interest in the property, except in easement purchased by non-qualified entities, and by clarifying the government's role to "facilitate and fund" the program. AFT also proposes that existing statutory language pertaining to "protecting topsoil" be eliminated.

Possible questions raised by these proposals include: What would the details of an FPP grant program, such as program requirements and quantitative criteria to evaluate qualified entities, look like? How would a grant program encourage broader participation of "land with prime, unique or other productive soil," rather than strictly favoring states with longstanding, established programs in the Northeast and in California? Would NRCS need additional personnel to handle the addition of a grant program for qualified entities, along with the existing program for non-qualified entities? How would monitoring and oversight of the easement be enforced? Who would assume responsibility for the property in cases where the qualified entity defaults or fails to comply with the terms of the easement? These and related questions may be raised in anticipated farm bill debate.

During the 109<sup>th</sup> Congress, several bills were introduced to amend the FPP statute and to raise program funding. None was enacted, but similar legislation may reemerge in the farm bill debate. Two bills (Kind, H.R. 6064, and Santorum, S. 3720) sought to enact the program changes recommended by AFT and NASDA. H.R. 6064 would also have raised authorized program funding to \$300 million per year through FY2013. Other FPP legislation introduced in the 109<sup>th</sup> Congress included proposals to raise funding to \$300 million per year through FY2012 (Pombo, H.R. 6193) and proposals to amend FPP, but not covering the types of changes currently proposed by AFT and NASDA (Holden, H.R. 6000, and Gerlach H.R. 1514).

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<sup>16</sup> See AFT, "Farm and Ranch Lands Protection Program," [<http://www.farmland.org/programs/campaign/newpolicyrecommendations.asp>]; NASDA, *NASDA 2007 Farm Bill Recommendations* [<http://www2.nasda.org/NR/exeres/BCA10C72-3D50-4EB7-ABC7-2780A8002A4E.htm>]. Other recommendations address easement valuation, among other suggested changes.