

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Notice of request for proposals.

SUMMARY: Section 2503 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) amended the Food Security Act of 1985 to include the Farm and Ranch Lands Protection Program (FRPP), formerly called the Farmland Protection Program (FPP). Congress delegated authority to administer FRPP to the Chief of the Natural Resources Conservation Service (NRCS). NRCS, on behalf of the Commodity Credit Corporation (CCC) and using its authorities, requests proposals from Federally-recognized Indian tribes, States, units of local government, and nongovernmental organizations to cooperate in the acquisition of conservation easements on farms and ranches. Eligible land includes farm and ranch land that has prime, unique, or other productive soil, or that contains historical or archaeological resources. These lands must also be subject to a pending offer from eligible entities for the purpose of protecting topsoil by limiting conversion of that land to nonagricultural uses. Over \$84 million in FRPP funds is available to purchase conservation easements in fiscal year 2004.

DATES: Proposals must be received in the NRCS State Office by May 3, 2004.

ADDRESSES: Written proposals should be sent to the appropriate NRCS State Conservationist, Natural Resources Conservation Service, USDA, in the State where the parcel is located. The telephone numbers and addresses of the NRCS State Conservationists are in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT:

Denise Coleman, NRCS; phone: (202) 720-9476; fax: (202) 720-0745; or e-mail: denise.coleman@usda.gov; Subject: FRPP, or consult the NRCS Web site at <http://www.nrcs.usda.gov/programs/farmbill/2002/PubNotc.html>. This announcement will also be posted at the following Web site: <http://www.fedgrants.gov>.

SUPPLEMENTARY INFORMATION:

Background

Urban sprawl continues to threaten the Nation's farm and ranch land as social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growth, demographic changes, the housing market, expansion of transportation systems, and economic prosperity have contributed to increases in agricultural land conversion rates. The amount of farm and ranch land lost to development and the quality of farmland being converted are significant concerns. In most States, prime farmland is being converted at two to four times the rate of other, less-productive agricultural land.

There continues to be an important national interest in the protection of farmland. Land use devoted to agriculture provides an important contribution to environmental quality, protection of the Nation's historical and archaeological resources, and scenic beauty.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of up to \$84 million for FRPP, until September 30, 2004. The NRCS State Conservationist must receive proposals for participation within 45 days of the date of this notice. State, Tribal, and local government entities and nongovernmental organizations, as defined herein, may apply. Selection will be based on the criteria established in this notice, and additional criteria developed by the applicable State Conservationist. Pending offers by an eligible entity must be for acquiring an easement for perpetuity, except where State law prohibits a permanent easement.

Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation

easement. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. For the entity, two cost-share options are available when providing its matching offer. One option is for the entity to provide in cash at least 25 percent of the appraised fair market value of the conservation easement. The second option is for the entity to provide at least 50 percent of the purchase price, in cash, of the conservation easement. The second option may be preferable to an entity in the case of a large bargain sale by the landowner. If the second option is selected, the NRCS share cannot exceed the entity's contribution.

The following two examples illustrate how these two cost-share options may function. Under Option 1 where 25 percent of the appraised fair market value is selected by the entity, the total appraised fair market value of the conservation easement is \$1 million. The landowner chooses to donate 40 percent of the appraised fair market value, resulting in the actual easement purchase price being \$600,000. In this case, the cooperating entity contributes \$250,000 and NRCS contributes \$350,000. Option 2, where 50 percent of the purchase price is selected, occurs when a landowner makes a large charitable donation, and 25% of the appraised fair market value exceeds 50 percent of the purchase price. For example, the total appraised fair market value of the conservation easement is \$1 million. The landowner chooses to donate 60 percent of the appraised fair market value, resulting in the actual easement purchase price being \$400,000. In this case, NRCS and the cooperating entity both contribute \$200,000.

Definitions

For the purposes of this notice, the following definitions apply:

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for

FRPP, and NRCS administers FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is approved by the local soil conservation district in consultation with the local committees established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Secretary, or by the Secretary.

Eligible entities means Federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations, which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land. Additionally, to be eligible for FRPP, the entity must have pending offers, for acquiring conservation easements for the purpose of protecting agricultural land from conversion to non-agricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, Statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer.

Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. In valuing conservation easements, the appraiser estimates both the fair market value of the whole property before the easement acquisition and the fair market value of the remainder property after the conservation easement has been imposed. The difference between these two values is deemed the value of the conservation easement.

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historical and archaeological resources must be:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA), or

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

Impervious Surface—Impervious surface is the area on the easement parcel covered by non-seasonal, permanent roof tops, concrete and asphalt.

Land Evaluation and Site Assessment System (LESA) is the land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act rule at 7 CFR part 658.)

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture.

Non-governmental organization is defined as any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code;

(3) Is described in section 509(a)(2) of that Code; or is described in section 509(a)(3) of that Code; and is controlled by an organization described in section 509(a)(2) of that Code.

Other productive soils are soils that are contained on farm or ranch land and that are identified as farmland of Statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines Statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some States and localities, farmlands of Statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657, sets forth the process for designating soils as Statewide or locally important.

Pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime and unique farmland are defined separately, as follows:

(1) Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

(2) Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and

vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Overview of the Farm and Ranch Lands Protection Program

The CCC, acting through NRCS, will accept proposals submitted to the NRCS State Offices from eligible entities, including Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for the purposes of protecting topsoil by limiting nonagricultural use of the land and/or protecting historical and archaeological sites on farm and ranch lands. Reference information regarding the FRPP can be found in the "Catalog of Federal Domestic Assistance 10.913."

All proposals must be submitted to the appropriate NRCS State Conservationist within 45 days from the date of this notice. The NRCS State Conservationist may consult with the State Technical Committee to evaluate the merits of the proposals.

The NRCS State Conservationist will review and evaluate the proposals based on State, Tribal or local government or nongovernmental organization eligibility, land eligibility, and the extent to which the proposal adheres to the objectives outlined in the NRCS State FRPP plan. Proposals must provide adequate proof of a pending offer for the subject land. Adequate proof includes a copy of a written bid, contract, commitment, or option extended to a landowner. Pending offers based upon appraisals completed and signed by State-certified or licensed appraisers will receive higher priority for FRPP funding. Proposals submitted directly to the NRCS National Office will not be accepted, and will be returned to the submitting entity.

Development of the State Farm and Ranch Lands Protection Program Plan

Funding awards to participants will be based on National and State criteria. FRPP will be available in those States for which an NRCS State Office submits

a State FRPP Plan to the NRCS National Office. Prior to submitting an application, interested entities should contact the appropriate State Conservationist, and ensure a State FRPP Plan has been submitted. At a minimum, the State FRPP Plan contains the following:

- Acreage of prime and important farm and ranch land estimated to be protected;
- Acreage of prime and important farm and ranch land converted to nonagricultural uses;
- Number or acreage of historic and archaeological sites estimated to be protected on farm or ranch lands;
- Total acres needing protection;
- FRPP cost per acre;
- Rate of land conversion;
- Percentage of funding guaranteed to be provided by cooperating entities;
- History of cooperating entities' commitments to conservation planning and implementing conservation practices;
- Participating entities' histories of acquiring, managing, holding, and enforcing easements (including average annual farmland protection expenditures over the past five years, accomplishments, and staff);
- Amount of FRPP funding requested; and
- Participating entities' estimated unfunded backlog of conservation easements on acres eligible for FRPP assistance.

At the State level, each State Conservationist will develop a State FRPP Plan to submit to NRCS National Office. This State FRPP Plan may be completed in consultation with the State Technical Committee, and it will include ranking considerations used by the State, including the above-mentioned criteria and other NRCS State ranking criteria. The following examples of NRCS State ranking criteria may be used to evaluate and rank specific parcels, including but not limited to proximity to protected clusters, viability of the agricultural operations, parcel size, type of land use, maximum cost expended per acre, an entity's commitment to assuring farm and ranch succession and transfer to viable farming operations, and percentage of funding guaranteed to be provided by cooperating entities. State ranking criteria will be developed on a State-by-State basis and will be available to interested participating entities before proposal submission. Interested entities should contact their State Conservationist for a complete listing of applicable National and State ranking criteria.

The National Office will allocate funds to States based on the information provided in the State FRPP Plan. Within 30 days after the Request for Proposal deadline has closed, the NRCS State Conservationist may make awards to eligible entities based on the funds provided. Once selected, eligible entities must work with the appropriate NRCS State Conservationist to finalize and sign cooperative agreements, incorporating all FRPP requirements.

The conveyance document (*i.e.*, conservation easement deed or conservation easement deed template) used by the eligible entity must be reviewed and approved by the USDA Office of General Counsel before being recorded. Since title to the easement is held by an entity other than the United States, the conveyance document must contain a clause that all rights conveyed by the landowner under the document will become vested in the United States should the Federally recognized Indian tribe, State, local unit of government, or nongovernmental organization (*i.e.*, the participant(s)) abandons, fails to enforce, or attempts to terminate the conservation easement.

As a condition of participation, all highly erodible land in the easement shall be included in a conservation plan. The conservation plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12, unless otherwise determined by the State Conservationist, in partnership with the eligible entity. The conservation plan will be implemented in a timely manner, as determined by the State Conservationist, following FRPP enrollment.

Organization and Land Eligibility Selection Criteria

To be eligible, a Federally recognized Indian tribe, State, unit of local government, or nongovernmental organization must have a farmland protection program that purchases conservation easements for the purpose of protecting prime, unique, or other productive soil or historical and archaeological resources by limiting conversion of farm or ranch land to nonagricultural uses. FRPP funds may not be used to place an easement on a property in which an employee, board member, or immediate family member of an employee or board member of the FRPP applicant and any other organizations partnering with the applicant in the acquisition of the easement has a property interest.

Criteria for Proposal Evaluation

Proposals must contain the information set forth below in order to receive consideration for assistance:

1. Organization and programs: Eligible entities must describe their farmland protection program and their record of acquiring and holding permanent agricultural land protection easements or other interests.

Information provided in the proposal should:

(a) Demonstrate a commitment to long-term conservation of agricultural lands through the use of voluntary easements that protect farmland from conversion to nonagricultural uses;

(b) Demonstrate the capability to acquire, manage, and enforce easements;

(c) Demonstrate the number and ability of staff that will be dedicated to monitoring easement stewardship;

(d) Demonstrate the availability of funds. The purchase price may not exceed the appraised fair market value of the conservation easement. If a landowner donation is included in the entity's match, the entity must demonstrate in cash, the availability of 25 percent of the appraised fair market value or 50 percent of the purchase price; and

(e) Include pending offer(s). A pending offer is a written bid, contract, commitment, or option extended to a landowner by an eligible entity to acquire a conservation easement that limits nonagricultural uses of the land before the legal title to these rights has been conveyed. The primary purpose of the pending offers must be for protecting topsoil by limiting conversion to nonagricultural uses. Pending offers having appraisals completed and signed by State-certified general appraisers will receive higher funding priority by the NRCS State Conservationist. Appraisals completed and signed by a State-certified or licensed general appraiser must contain a disclosure statement by the appraiser. The disclosure statement should include at a minimum the following: the appraiser accepts full responsibility for the appraisal, the enclosed statements are true and unbiased, the value of the land is limited by stated assumptions only, the appraiser has no interest in the land, and the appraisal conforms to the Uniform Standards of Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions.

2. Lands to be acquired: The proposal must describe the lands to be acquired with assistance from FRPP. Specifically, the proposal must include the following:

(a) A map showing the proposed protected area(s);

(b) The amount and source of funds currently available for each easement to be acquired;

(c) The criteria used to set the acquisition priorities; and

(d) A detailed description of the land parcels, including:

(i) The priority of the offers;

(ii) The names of the landowners;

(iii) The address and location maps of the parcels;

(iv) The size of the parcels, in acres;

(v) The acres of the prime, unique, or State-wide and locally important soil in the parcels;

(vi) The acreage of permanent, non-seasonal impervious surface;

(vii) The number or acreage of historical or archaeological sites, if any, proposed to be protected, and a brief description of the sites' significance;

(viii) A map showing the location of other protected parcels in relation to the land parcels proposed to be protected;

(ix) Estimated cost of the easement(s): The consideration to be paid to any landowners for the conveyance of any lands or interests in lands cannot be more than the fair market value of the land or interests conveyed, as determined by an appraiser licensed in the State;

(x) An example of the cooperating entity's proposed easement deed used to prevent agricultural land conversion;

(xi) Indication of the accessibility to markets;

(xii) Indication of an existing agricultural infrastructure, on- and off-farm, and other support system(s);

(xiii) Statement regarding the level of threat from urban development;

(xiv) A description of the eligible entity's farmland protection strategy and how the FRPP proposal submitted by the entity corresponds to the entity's strategic plan;

(xv) Other factors from an evaluation and assessment system used by the applicant for selecting parcels. For example, the eligible entity may use the LESA system or a similar land evaluation system as its tool and include the scores for the land parcels slated for acquisition;

(xvi) Other partners involved in acquisition of the easement and their estimated financial contribution; and

(xvii) Other information that may be relevant as determined by the NRCS State Conservationist.

Ranking Considerations

When the NRCS State Office has assessed organization eligibility and the merits of each proposal, the NRCS State Conservationist will determine whether

the farm or ranch land is eligible for financial assistance from FRPP. NRCS will use the National, as well as State criteria, which may include a LESA system or other comprehensive system, to evaluate the land and rank the parcels.

NRCS will only consider enrolling eligible land in the program that is of sufficient size and has boundaries that allow for efficient management of the area. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in FRPP that is owned in fee title by an agency of the United States, is publicly-owned land, or land that is already subject to an easement or deed restriction that limits agricultural viability.

NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FRPP would not be effective because of onsite or offsite conditions. For example, as it relates to on-site conditions, a proposal may nominate a parcel that contains hazardous material, or it may nominate a parcel that contains or may allow over two percent impervious surface coverage on the land under easement. The presence of hazardous waste or the extensive impervious surface coverage will likely cause NRCS to determine that the use of FRPP funds is not appropriate. As it relates to offsite conditions, NRCS may avoid acquiring land that is surrounded by a developed area or slated to be zoned for development by a local government.

NRCS will place a priority on acquiring easements that provide permanent protection from conversion to nonagricultural use. NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements. NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure. NRCS may place a higher priority on lands and locations that correlate with the efforts of Federal, State, Tribal, local, or nongovernmental organizations' efforts that have complementary farmland protection objectives (e.g., open space or watershed and wildlife habitat protection). NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing

government or private conservation projects.

Cooperative Agreements

The CCC, through NRCS, enters into a cooperative agreement with a selected eligible entity to document participation in FRPP. The cooperative agreement will address, among other subjects—

(1) The easement type, terms, and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role and responsibilities of NRCS and the cooperating entity;

(4) The responsibilities of the easement manager on lands acquired with FRPP assistance; and

(5) Other requirements deemed necessary by the CCC, acting through NRCS, to protect the interests of the United States. The cooperative agreement will also include an attachment listing the pending offers accepted in FRPP, landowners' names, addresses, location map(s), and other relevant information. Interested entities should contact their State Conservationist for a copy of a draft cooperative agreement before submitting an application.

Signed in Washington, DC, on March 11, 2004.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

NRCS State Conservationists

Alabama: Robert N. Jones, 3381 Skyway Drive, Post Office Box 311, Auburn, AL 36830; phone: (334) 887-4500; fax: (334) 887-4552; robert.jones@al.usda.gov.

Alaska: Shirley Gammon, Atrium Building, Suite 100, 800 West Evergreen, Atrium Building, Suite 100, Palmer, AK 99645-6539; phone: (907) 761-7760; fax: (907) 761-7790; sgammon@ak.nrcs.usda.gov.

Arizona: Michael Somerville, Suite 800, 3003 North Central Avenue, Phoenix, AZ 85012-2945; phone: (602) 280-8808; fax: (602) 280-8809 or 8805; msomervi@az.nrcs.usda.gov.

Arkansas: Kalven L. Trice, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201-3228; phone: (501) 301-3100; fax: (501) 301-3194; kalven.trice@ar.usda.gov.

California: Charles W. Bell, Suite 4164, 430 G Street, Davis, California 95616-4164; phone: (530) 792-5600; fax: (530) 792-5790; charles.bell@ca.usda.gov.

Colorado: James Allen Green, Room E200C, 655 Parfet Street, Lakewood, CO 80215-5521; phone: (720) 544-

2810; fax: (720) 544-2965;

allen.green@co.usda.gov.

Connecticut: Margo L. Wallace, 344 Merrow Road, Tolland, Connecticut 06084; phone: (860) 871-4011; fax: (860) 871-4054;

margo.wallace@ct.usda.gov.

Delaware: Ginger Murphy, Suite 101, 1203 College Park Drive, Suite 101, Dover, DE 19904-8713; phone: (302) 678-4160; fax: (302) 678-0843; ginger.murphy@de.usda.gov.

Florida: T. Niles Glasgow, 2614 NW 43rd Street, Gainesville, FL 32606-6611, or Post Office Box 141510, Gainesville, FL 32606-6611; phone: (352) 338-9500; fax: (352) 338-9574; niles.glasgow@fl.usda.gov.

Georgia: Leonard Jordan, Federal Building, Stop 200, 355 East Hancock Avenue, Athens, GA 30601-2769; phone: (706) 546-2272; fax: (706) 546-2120;

leonard.jordan@ga.usda.gov.

Guam: Joan B. Perry, Director, Pacific Basin Area, Suite 301, FHB Building, Suite 301 400 Route 8, Mongmong, GU 96910; phone: (671) 472-7490; fax: (671) 472-7288;

joan.perry@pb.usda.gov.

Hawaii: Lawrence Yamamoto, Acting, Room 4-118, 300 Ala Moana Boulevard, Post Office Box 50004, Honolulu, HI 96850-0002; phone: (808) 541-2600; fax: (808) 541-1335; lyamamoto@hi.nrcs.usda.gov.

Idaho: Richard W. Sims, Suite C, 9173 West Barnes Drive, Boise, ID 83709; phone: (208) 378-5700; fax: (208) 378-5735; richard.sims@id.usda.gov.

Illinois: William J. Gradle, 2118 W. Park Court, Champaign, IL 61821; phone: (217) 353-6600; fax: (217) 353-6676; bill.gradle@il.usda.gov.

Indiana: Jane E. Hardisty, 6013 Lakeside Boulevard, Indianapolis, IN 46278-2933; phone: (317) 290-3200; fax: (317) 290-3225; jane.hardisty@in.usda.gov.

Iowa: Leroy Brown, 693 Federal Building, Suite 693, 210 Walnut Street, Des Moines, IA 50309-2180; phone: (515) 284-6655; fax: (515) 284-4394; leroy.brown@ia.usda.gov.

Kansas: Harold Klaege, 760 South Broadway, Salina, KS 67401-4642; phone: (785) 823-4565; fax: (785) 823-4540; harold.klaege@ks.usda.gov.

Kentucky: David G. Sawyer, Suite 110, 771 Corporate Drive, Lexington, KY 40503-5479; phone: (859) 224-7350; fax: (859) 224-7399; dsawyer@ky.usda.gov.

Louisiana: Donald W. Gohmert, 3737 Government Street, Alexandria, LA 71302; phone: (318) 473-7751; fax: (318) 473-7626; don.gohmert@la.usda.gov.

Maine: Joyce Swartzendruber, Suite 3, 967 Illinois Avenue, Bangor, ME 04401; phone: (207) 990-9100, ext. 3; fax: (207) 990-9599;

joyce.swartzendruber@me.usda.gov.

Maryland: David P. Doss, John Hanson Business Center, Suite 301, 339 Busch's Frontage Road, Annapolis, MD 21401-5534; phone: (410) 757-0861; fax: (410) 757-0687; david.doss@md.usda.gov.

Massachusetts: Cecil B. Currin, 451 West Street, Amherst, MA 01002-2995; phone: (413) 253-4351; fax: (413) 253-4375;

cecil.currin@ma.usda.gov.

Michigan: Ronald C. Williams, Suite 250, 3001 Coolidge Road, East Lansing, MI 48823-6350; phone: (517) 324-5270; fax: (517) 324-5171; ron.williams@mi.usda.gov.

Minnesota: William Hunt, Suite 600, 375 Jackson Street, St. Paul, MN 55101-1854; phone: (651) 602-7900; fax: (651) 602-7913 or 7914; william.hunt@mn.usda.gov.

Mississippi: Homer L. Wilkes, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, MS 39269-1399; phone: (601) 965-5205; fax: (601) 965-4940;

hwilkes@ms.nrcs.usda.gov.

Missouri: Roger A. Hansen, Parkade Center, Suite 250, 601 Business Loop 70, West Columbia, MO 65203-2546; phone: (573) 876-0901; fax: (573) 876-0913;

roger.hansen@mo.usda.gov.

Montana: David White, Federal Building, Room 443, 10 East Babcock Street, Bozeman, MT 59715-4704; phone: (406) 587-6811; fax: (406) 587-6761; dwhite@mt.nrcs.usda.gov.

Nebraska: Stephen K. Chick, Federal Building, Room 152, 100 Centennial Mall, North Lincoln, NE 68508-3866; phone: (402) 437-5300; fax: (402) 437-5327; steve.chick@ne.usda.gov.

Nevada: Livia Marques, Building F, Suite 201, 5301 Longley Lane, Reno, NV 89511-1805; phone: (775) 784-5863; fax: (775) 784-5939;

livia.marques@nv.usda.gov.

New Hampshire: Richard D. Babcock, Federal Building, 2 Madbury Road, Durham, NH 03824-2043; phone: (603) 868-7581; fax: (603) 868-5301; richard.babcock@nh.nrcs.usda.gov.

New Jersey: Anthony J. Kramer, 220 Davidson Avenue, 4th Floor, Somers, NJ 08873-3157; phone: (732) 537-6040; fax: (732) 537-6095; tkramer@nj.nrcs.usda.gov.

New Mexico: Rosendo Trevino III, Suite 305, 6200 Jefferson Street, NE., Albuquerque, NM 87109-3734; phone: (505) 761-4400; fax: (505) 761-4462; rosendo.trevino@nm.usda.gov.

New York: Joseph R. DelVecchio, Suite 354, 441 South Salina Street, Syracuse, NY 13202-2450; phone: (315) 477-6504; fax: (315) 477-6550; joseph.delvecchio@ny.usda.gov.

North Carolina: Mary K. Combs, Suite 205, 4405 Bland Road, Raleigh, NC 27609-6293; phone: (919) 873-2101; fax: (919) 873-2156; mary.combs@nc.usda.gov.

North Dakota: Serapio Flores, Jr., Room 278, 220 E. Rosser Avenue, Post Office Box 1458, Bismarck, ND 58502-1458; phone: (701) 530-2000; fax: (701) 530-2110; serapio.flores@nd.usda.gov.

Ohio: J. Kevin Brown, Room 522, 200 North High Street, Columbus, OH 43215-2478; phone: (614) 255-2500; fax: (614) 255-2548; kevin.brown@oh.usda.gov.

Oklahoma: M. Darrel Dominick, USDA Agri-Center Building, Suite 206, 100 USDA, Stillwater, Oklahoma 74074-2655; phone: (405) 742-1204; fax: (405) 742-1126; darrel.dominick@ok.usda.gov.

Oregon: Robert Graham, Suite 1300, 101 SW. Main Street, Portland, OR 97204-3221; phone: (503) 414-3200; fax: (503) 414-3103; bob.graham@or.usda.gov.

Pennsylvania: Robin E. Heard, Suite 340, 1 Credit Union Place, Harrisburg, PA 17110-2993; phone: (717) 237-2202; fax: (717) 237-2238; robin.heard@pa.usda.gov.

Puerto Rico: Juan A. Martinez, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918-4123; phone: (787) 766-5206; fax: (787) 766-5987; juan.martinez@pr.usda.gov.

Rhode Island: Judith Doerner, Suite 46, 60 Quaker Lane, Warwick, RI 02886-0111; phone: (401) 828-1300; fax: (401) 828-0433; judith.doerner@ri.usda.gov.

South Carolina: Walter W. Douglas, Strom Thurmond Federal Building, Room 950, 1835 Assembly Street, Columbia, SC 29201-2489; phone: (803) 253-3935; fax: (803) 253-3670; walt.douglas@sc.usda.gov.

South Dakota: Janet L. Oertly, Federal Building, Room 203, 200 Fourth Street, SW., Huron, SD 57350-2475; phone: (605) 352-1200; fax: (605) 352-1288; janet.oertly@sd.nrcs.usda.gov.

Tennessee: James W. Ford, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203-3878; phone: (615) 277-2531; fax: (615) 277-2578; jford@tn.nrcs.usda.gov.

Texas: Lawrence Butler, W.R. Poage Building, 101 South Main Street, Temple, TX 76501-7602; phone: (254)

742-9800; fax: (254) 742-9819; larry.butler@tx.usda.gov.

Utah: Harry Slawter, Acting, W.F. Bennett Federal Building, Room 4402, 125 South State Street, Salt Lake City, UT 84138, Post Office Box 11350, Salt Lake City, UT 84147-0350, phone: (801) 524-4550, fax: (801) 524-4403; harry.slawter@ut.usda.gov.

Vermont: Francis M. Keeler, 356 Mountain View Drive, Suite 105, Colchester, VT 05446; phone: (802) 951-6795; fax: (802) 951-6327; fran.keeler@vt.usda.gov.

Virginia: M. Denise Doetzer, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229-5014; phone: (804) 287-1691; fax: (804) 287-1737; denise.doetzer@va.usda.gov.

Washington: Raymond L. "Gus" Hughbanks, Rock Pointe Tower II, Suite 450, W. 316 Boone Avenue, Spokane, WA 99201-2348; phone: (509) 323-2900; fax: (509) 323-2909; raymond.hughbanks@wa.usda.gov.

West Virginia: Lillian V. Woods, Room 301, 75 High Street, Morgantown, WV 26505; phone: (304) 284-7540; fax: (304) 284-4839; lillian.woods@wv.usda.gov.

Wisconsin: Patricia S. Leavenworth, 8030 Excelsior Drive, Suite 200, Madison, WI 53717; phone: (608) 662-4422; fax: (608) 662-4430; pat.leavenworth@wi.usda.gov.

Wyoming: Lincoln E. Burton, Federal Building, Room 3124, 100 East B Street, Casper, WY 82601-1911; phone: (307) 261-6453; fax: (307) 261-6490; ed.burton@wy.usda.gov.

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DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Region; Authorization of Livestock Graving Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a final environmental impact statement for the authorization of livestock graving on the Sacramento Grazing Allotment.

SUMMARY: In a previous *Federal Register* announcement (December 8, 2003, Vol 68, No. 235, page 68325) the Forest Service provided notice it would prepare a final environmental impact statement on a proposal to authorize

livestock graving activities on the Sacramento Grazing Allotment by January 2004. The project area encompasses approximately 115,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing allotment comprises approximately 25% of the ranger district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock. This notice is to advise interested parties that a final environmental impact statement (FEIS) will be available for public review in March 2004.

Responsible Official: The District Ranger will decide whether or not to authorize domestic livestock grazing on the Sacramento Allotment which will include appropriate forest plan standards and guidelines in part 3 of the existing grazing permit. If grazing is authorized, the District Ranger will decide on the permitted number of animals and season of use, range facilities to be constructed, allowable utilization standards, required monitoring, and mitigation measures (best management practices, BMPs).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Rick Newmon or Mark Cadwallader at (505) 682-2551.

Dated: February 25, 2004.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2004

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction and acquisition and rehabilitation of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA). A