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FOOD, CONSERVATION AND ENERGY ACT OF 2008: FARMLAND PROTECTION PROGRAM (FPP)

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What is FPP?

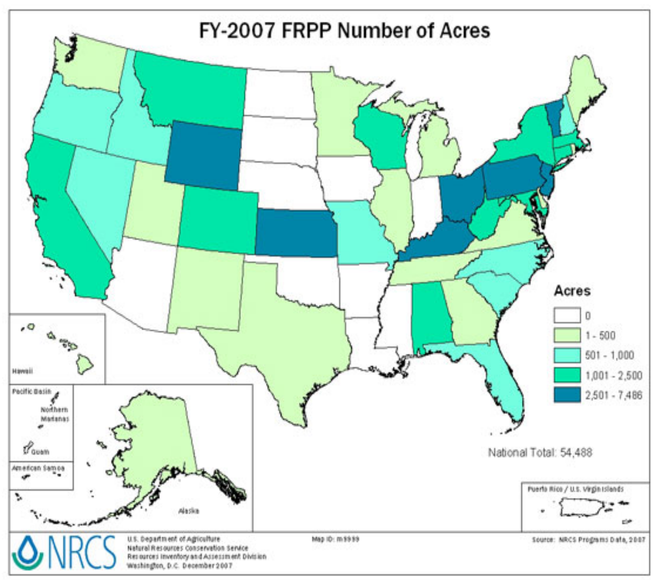
Congress established the Farmland Protection Program (FPP) in the 1996 Farm Bill to limit nonagricultural uses of certain agricultural lands. The program was renamed the Farm and Ranch Land Protection Program (FRPP) for the 2002 Farm Bill, and changed back to the FPP in 2008.

The objective of the Farmland Protection Program is to help farmers and ranchers keep their working agricultural land in agriculture. Producers voluntarily sell conservation easements for their land in exchange for rental payments. Purchasing organizations for the conservation easements include the USDA itself, state and local government organizations, Tribes, and non-governmental organizations. These easements are a contract with landowners to keep their land in agricultural uses for the term of the contract (typically perpetual) and develop conservation plans for highly erodible lands. Landowners retain agricultural rights to the land; funding comes from the Commodity Credit Corporation (CCC). State, local, or Tribal governments or non-governmental organizations may supplement their share of the easement costs through a landowner's donation.

How does this affect Colorado?

From 2002-2007, the state NRCS office funded 62 FRPP contracts on 39,204 acres in Colorado.

In 2007, Colorado was among the states with the most acres protected in this program nationwide. The map below shows the number of acres included in FRPP cooperative agreements signed in fiscal year 2007, by state.



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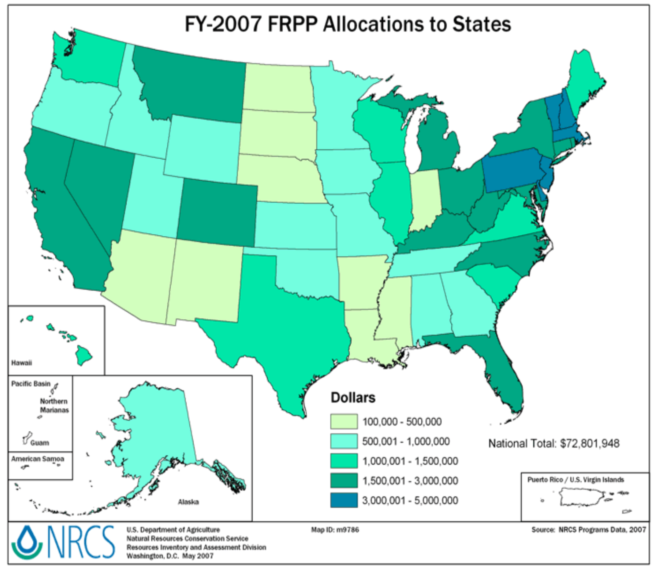
The map on the right shows the amounts allocated to states to fund FRPP programs in fiscal year 2007 (Source: USDA NRCS 2007).



What has changed for the 2008 Farm Bill?

Previous Legislation	**2008 Farm Bill**
Provided $499 million in CCC funding for FY 2002-07.	Mandates $743 million in funding for FY 2008-12.
Purpose was to protect topsoil by limiting nonagricultural uses of land. Eligible land included cropland, rangeland, grassland, pastureland, and incidental forest land that was part of agricultural operation. Farm had to contain at least 50% of soil that is prime, unique, or important locally or Statewide to be eligible.	Changes program purpose from focus on topsoil to protecting agricultural use and conservation values of land by limiting nonagricultural uses. Eligible land now includes forest land and other land that contributes to economic viability of agricultural operation or that serves as buffer from development.
Limited Federal share of easement cost to 50% of appraised fair market value of easement. Eligible cooperating entity could include, as part of its share of purchase price, donation by landowner of up to 25% of fair market value.	Continues Federal share cap at 50% of appraised fair market value of easement. Cooperating entity share must be at least 25% of purchase price; landowner donations contributed as part of cooperating entity share are no longer capped. Allows entity to designate terms and conditions for their deed and to choose appraisal methodology, subject to approval of Secretary.
Priority could not be assigned to applications solely on basis of lesser cost for applications that were otherwise comparable in achieving program purposes.	Retains provision.
Generally limited impervious surfaces to 2% of easement area but could be up to 6% under certain conditions. Required highly erodible land to have conservation plan	Allows eligible entities to specify limit on impervious surfaces. Retains conservation plan requirement.
Easements were purchased by eligible entities, and Federal government purchased right to enforce easement if entity failed to do so.	Retains provision.

Source: USDA ERS (2008)

Producers nationwide were asked to prioritize five alternatives for funding the preservation of open space and farmland in a 2006 Farm Foundation survey. The top-ranked alternative was supporting entrepreneurial programs to increase agricultural competitiveness. The next alternatives in order of preference were encouraging voluntary donations of conservation easements to conservation foundations, providing federal funding to purchase development rights and conservation easements, then providing private funding to purchase development rights and conservation easements. The least-favored alternative was providing federal support to local governments to allow transfer-of-development-rights programs. Colorado producers' responses to the same question were in line with national responses for both small producers (less than $100,000 annual market value of product sold) and large producers ($250,000 or greater in annual market value of product sold).

The same set of surveys asked producers what kind of federal assistance they thought should be provided for several environmental policy goals. Federal assistance was favored for the open space protection goal: 24.7 percent of Colorado producers and 25 percent of national producers preferred technical assistance only, while 34.7 percent of Colorado producers and 35 percent of national producers preferred a combination of technical and financial assistance. About a quarter of Colorado respondents were against the provision of federal assistance (26.7 percent) compared to 19 percent of national producers. There were 13.9 percent of Colorado producers and 21 percent of national producers who had no opinion.

When asked what kind of federal assistance they thought should be provided for soil erosion control, which has been a focus of conservation titles since the 1985 Farm Bill, the clear majority of producers preferred a combination of technical and financial assistance. Specifically, 58.8 percent of Colorado producers and 65 percent of producers nationally favored this combination of support. Another 25.8 percent of Colorado producers and 23 percent of national producers preferred technical assistance only. Only 7.7 percent of Colorado producers and 7 percent of national producers wanted no technical assistance, while 7.6 percent in Colorado and 7 percent nationally had no opinion.

How do conservation easements work?

The Purchase of Agricultural Conservation Easements (PACE) program is a voluntary program wherein an entity purchases the future development rights to a piece of land so that the land must remain in agricultural uses. The entity pays the landowner a lump sum payment in exchange for the development rights; the payment will not exceed the appraised fair market value. The landowner retains both full ownership of the land and the agricultural rights to the land. Land can still be transferred, deeded, or sold by the landowner. The landowner remains responsible for paying any property taxes. Provisions for public access are only included if they are negotiated specifically for the piece of land in question. Because easements affect only non-farm activities, they should not inhibit the landowner's ability to borrow operating funds.

Landowners participate by submitting an application to a state, local, or Tribal government or non-government entity that has an existing farm or ranch land protection program. These entities acquire perpetual development rights to the land in exchange for a payment to the landowner, who agrees to keep their land in agricultural uses and implement a protection plan for highly erodible land. These easements become part of the land deed. There are typically few restrictions on development related to agriculture and some farm-related housing may be allowed; however, non-agricultural development and subdivisions are not allowed under the easement. Each easement is tailored to the current and future needs of the specific piece of land in question.

Conservation easements are typically valued by an outside appraiser, who compares the fair market value of the land to the value of the land under restricted uses. Fair market value is usually determined using comparable sales. Easement sales must be reviewed by any companies that hold a lien on the land in question, just as with any other transactions on the property. Proceeds from easement sales are treated like any other capital gains for tax purposes.

The easement agreement is processed, held, managed, and enforced by the cooperating governmental or nongovernmental agency to which the landowner submitted the application. Easement deeds must include a federal contingent right interest in the property to protect the federal investment if the cooperating agency terminates, defaults, or divests itself from the easement. The NRCS share of the easement may not exceed 50% of the appraised fair market value of the easement.

What are the policy implications?

The Grasslands Reserve Program (GRP) and FPP programs are agricultural lands preservation programs. These programs use public sector purchases of permanent easements, temporary easements or rental agreements, and purchase of non-agricultural development rights to keep land in agricultural uses. The primary benefits to this type of program are restriction of development and prevention of fragmentation due to development. Reasons to institute such a program range from preservation of agricultural heritage to preservation of scenic views and recreational activities. These benefits are not generally fully valued in markets, so government intervention is required to provide incentives for producers. By keeping lands in agricultural uses, these programs may also meet national food security goals.

What land is eligible for FPP?

Land that may qualify for FPP meets the following conditions:

- it contains prime, unique, or other productive soil or historical or archaeological resources
- it is included in a pending farmland protection program by a state, Tribal, or local government or a non-governmental organization
- it is privately owned
- any highly erodible land is covered by a conservation plan
- it is large enough to sustain agricultural production
- it is accessible to markets for the products produced by the landowners
- it is surrounded by parcels of land that can support long-term agricultural production
- it is owned by an individual or entity that does not exceed the Adjusted Gross Income (AGI) limitation and
- it is not constrained from being converted to non-agricultural uses by an existing deed or other legal restriction.

Qualifying historical and archaeological resources that may be protected under the FPP are those that are listed in the National Register of Historic Places, listed in the State or Tribal Register of Historic Places, or are deemed formally eligible to be listed in those registers.

As with most Farm Bill programs, participants are subject to the AGI limitation: participating individuals or entities must not have an Adjusted Gross Income (AGI) exceeding $1 million for the three tax years preceding the year in which the contract is approved. An exception is made when at least 2/3 of AGI comes from farming, ranching, or forestry operations.

How do I apply?

Applications are made in the spring of years that the state of Colorado receives a federal funding allocation for the FPP and are approved in the spring of the same year. Applications, once received, are ranked according to the criteria in 1) the national ranking system and 2) the weighted ranking system developed by the State Conservationist and State Technical Committee. These two ranking systems receive relative weights of at least 50% for the national criteria and the remaining weight for the state criteria. Priority easements protect the most threatened prime, unique, and important farmland or historical and archaeological sites that are located on farm or ranch land.
Other priority considerations for easements are:

- the entity acquiring the easement has extensive easement management experience, adequate management staff for stewardship responsibilities, and acceptable oversight requirements
- the lands fit with other federal, tribal, state, local, or nongovernmental organizations' efforts on complementary farmland protection objectives
- the lands provide special social, economic, and environmental benefits to the region
- the lands are located in geographic regions where their enrollment may help achieve national, state, and regional goals and objectives.

Who do I contact for more information?

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