



December 28, 2010

The Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, NW
Room 10276
Washington, DC 20410-0500

Electronically Submitted via www.regulations.gov

Re: Comments of Waters Advocacy Coalition in response to the Department of Housing and Urban Development's proposed rule establishing regulations to govern the Housing Trust Fund, 75 Fed. Reg. 66,978 (Oct. 29, 2010)

To Whom It May Concern:

The Waters Advocacy Coalition (WAC or the Coalition) submits the following comments in response to the Department of Housing and Urban Development's (HUD) proposed regulations, which will govern the Housing Trust Fund (HTF). *See Proposed Rule, 75 Fed. Reg. 66,978 (Oct. 29, 2010)*. The HTF was established to provide grants to state governments to increase and preserve the supply of rental housing for extremely low-and very low-income families, including homeless families, and to increase homeownership to extremely low-and very low-income families. *Id.* The member organizations in WAC represent a large percentage of the economy of the country and a large sampling of the industries regulated by the Clean Water Act (CWA). WAC members are committed to the protection and restoration of America's wetlands resources, and many actually rely on the health of the nation's water resources. However, of utmost importance to all of the Coalition's members is regulations that are consistent, predictable, timely, and focused on protecting ecological resources.

WAC has two primary concerns with the proposed rule. First, it adopts a new and different definition of the term "wetlands", which will create confusion and unintended consequences for the HTF program. Second, many of WAC's members work within the agricultural industries and object to the vague and overbroad restrictions placed on farmland contained in the proposed regulations. Consequently, WAC requests that the final regulations rely on the existing regulatory definition of "wetlands" and that HUD eliminate the vague restrictions on agricultural land.

In the proposed rule, HUD has created its own, new definition for wetlands, *75 Fed. Reg.* at 66,997, rather than utilize the well-recognized definition of wetlands contained in regulations adopted by the U.S. Army Corps of Engineers' (Corps) and the Environmental Protection Agency's (EPA) (jointly, the Agencies) pursuant to the CWA. *See 33 C.F.R. 328.3(b); 40 C.F.R. § 232.2*. HUD specifically states that "[t]his definition is independent of the definition of

jurisdictional wetlands used by the [Corps]...,” *id.*, but provides no explanation why it has chosen to depart from that widely utilized definition. While the Agencies’ regulations are certainly not the epitome of clarity, adopting a different definition of wetlands for purposes of this program will only create practical and legal confusion. WAC respectfully believes that creating a new definition of wetlands will do nothing more than create more uncertainty in an already uncertain regulatory arena.

Indeed, in other parts of the proposed rule, rather than create a new definition, HUD has deferred to the standards or definitions already established by the agencies that administer those specific programs and, thus, have expertise to define the terms. For example, with respect to historic preservation, the proposed rule states that the “project activities [] must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places,” 75 *Fed. Reg.* at 66,997, and “must meet the Secretary of the Interior’s Standards for Rehabilitation, as verified by someone that meets the Secretary of the Interior’s Professional Qualification Standards.” *Id.* Similarly, HUD adopts the definitions for floodplains as set forth at 24 C.F.R. part 55, and defers to the Federal Emergency Management Agency’s Flood Insurance Rate Maps and designations. *Id.* Further, HUD requires projects to be “in compliance with the standards” for explosives and hazards set forth at 24 C.F.R. part 51, Subpart C,” *id.*, and utilizes the U.S. Fish & Wildlife Service’s or National Marine Fisheries Service’s designations for endangered or threatened species. *Id.* at 66,998. In other words, throughout the proposed rule, HUD has deferred to the accepted definitions adopted by regulation for programs administered by other federal agencies that are widely recognized to be the “expert” in that arena. HUD should do the same here and utilize the definition of wetlands that the Corps and EPA have adopted in their regulations implementing the CWA rather than create its own definition for the limited purposes of this program.

The proposed rule states that project activities “must not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses.” 75 *Fed. Reg.* at 66,997. References to such vague and subjective terms such as “unique,” “prime,” and “significant,” unnecessarily inject uncertainty into the HTF program. We know of no current standard definitions for these terms. There is simply no reason for HUD to be pioneering new regulatory programs and requirements for agricultural lands, most of which is privately owned property. Therefore, HUD should eliminate these new restrictions regarding agricultural land.

In conclusion, WAC encourages HUD to delete the definition of wetlands that it has created in the proposed rule. Instead, HUD should adopt the Agencies’ definition of wetlands. Relying on the same definition as the Agencies will reduce confusion over what constitutes a wetland for purposes of the HTF. WAC also recommends that HUD eliminate the new restriction and provision regarding farmland.

Thank you for the opportunity to comment on this proposal.

Sincerely,

American Farm Bureau Federation
American Road and Transportation Builders Association
Associated General Contractors

Bell Clay Producers Association
Croplife America
Foundation for Environmental and Economic Progress
Industrial Minerals Association – North America
International Council of Shopping Centers
International Diatomite Producers Association
National Alliance of Forest Owners
National Association of Home Builders
National Cattlemen’s Beef Association
National Council of Farmer Cooperatives
National Corn Growers Association
National Industrial Sand Association
National Milk Producers Federation
National Mining Association
National Pork Producers Council
National Stone, Sand and Gravel Association
Public Lands Council
Southern Crop Protection Association
United Egg Producers