

Land Trust Alliance Farm Bill Policy Recommendations Draft 9 20 2017

Authorize Agricultural Conservation Easement Program (ACEP) funding at \$500 million per year

Despite the many benefits of protecting working agricultural lands, the funding for ACEP saw a large decrease in the 2014 Farm Bill. The three previous programs that were combined to create ACEP (Wetlands Reserve Program, Farm and Ranch Lands Protection Program, and Grassland Reserve Program) were funded at an average total of \$732 million annually from 2009-2012. Yet the average for ACEP for 2014-2018 is \$405 million -- a 32% decrease from the previous average. Even more alarming is that ACEP funding drops to \$250 million annually in FY18 and in future years, which is a 66% decline from the previous average. This decrease in funds makes it increasingly difficult for partners who rely on ACEP funds to leverage state and local funding for farmland protection projects. The Land Trust Alliance's (Alliance) highest priority for the 2018 Farm Bill Reauthorization is to authorize ACEP at \$500 million per year.

Agricultural Land Easement Streamlining and Flexibility Recommendations (ALE)

The Alliance believes there is a need to streamline ALE to ease administrative burdens and provide flexibility for producers, land trusts, and NRCS. The result would save the federal government significant time and money, while making the process easier and more timely for a broad variety of farmers and ranchers, from Vermont to Texas, Pennsylvania to Montana, California to Michigan, and every state in between. Often times it take a year to 18 months to complete this easement process. Allowing more flexibility to set deed terms is critical as different states have different goals and should allow easements to best suit the needs of the state or land trust. A one-size fits all set of terms is difficult as California might have significantly different goals than say Texas.

1. Minimum Deed Terms, Right of Enforcement, and ALE Plans

a. Allow for flexibility to acknowledge local or regional nuances

Revise Section 1265B(b)(4)(C)(i) to read: "... are consistent with the purposes of the program and are consistent with the agricultural activities to be conducted." This language is currently used related to the impervious surface requirement which has been treated with more flexibility by the agency. This would also allow for flexibility to address local and regional matters in a more appropriate manner.

b. Remove ALE Plan as part of the minimum deed terms

Remove ALE plans from part of the actual easement deed. USDA is interpreting the ACEP statute to require that the terms and conditions of an ALE easement include an agricultural land easement plan. This plan is much more onerous than a traditional conservation plan. NRCS wants the development of a robust and comprehensive agricultural land easement

plan, such as a plan at the NRCS Resource Management System (RMS) planning level, and identified that such a plan could include both required and recommended practices. The Alliance recommends not making this a term of the easement and return to the idea of only requiring a conservation plan for HEL and a grassland management for grasslands as was the case prior to the 2014 farm bill.

c. Clarify Contingent Right of Enforcement

Revise 1265B(b)(4)(C)(iii) to include a new subparagraph (I) that further limits the Secretary's authority to trigger the contingent right of enforcement and clarifies that the right does not extend to a right of inspection. Suggested language: "(I) the right of enforcement does not extend to a right of inspection unless the holder of the easement fails to provide inspection reports in a timely manner."

d. Explicitly allow subsurface mineral development as long as it does not hurt conservation values

Add a new subsection that explicitly states that subsurface mineral development can occur as long as it complies with the limited, localized and not irretrievably destructive of the conservation values standard from the treasury regulations.

e. Allow easement holders to participate in ecosystem markets

Add a new subsection that explicitly states that the easement does not eliminate or restrict the Grantor's participation in any other environmental market (i.e. ecosystem services markets).

2. Authorize a Robust Certification Process

- a. Allow Certified entities to write their own minimum deed terms
- b. Revise Certification Criteria. Revise Section 1265B(b)(5)(B) as follows: "(B) Certification Criteria. – In order to be certified, an eligible entity shall demonstrate to the Secretary that the entity, (1) is an Accredited Land Trust having completed at a minimum five acquisitions using program funds, or (2) will maintain, at a minimum, for the duration of the agreement..."

3. Matching Funds

Delete Section 1265B(b)(2)(B) and (C). Landowner donation and landowner expenses related to the conservation easement transaction should satisfy matching requirements for ACEP investments. This adjustment would open access to the program to additional states where conservation funding is not currently readily available (i.e. TX, KS, etc.).

4. Adjusted Gross Income Limitation:

Section 1001D(b)(1)(C) Add an exemption to the Adjusted Gross Income (AGI) limitations for ACEP. Unlike financial assistance payments in title I, compensation for the purchase of a conservation easement is not a subsidy

payment but a conveyance of a private real property right through which the landowner must give up something of value in exchange for the program payment. Critical and sensitive lands owned by individuals who do not meet the AGI eligibility requirement are ineligible for enrollment in ACEP and the protection of a NRCS funded conservation easement.

5. *Buy-Protect-Sell:*

A widely acknowledged problem for beginning farmers and others trying to break in to farming is the high cost of purchasing land. One way to address this is to specifically allow “buy, protect, sell.” Under this concept, a participating entity will “buy” the agricultural land; “protect” it with a permanent easement so it cannot be developed; and then “sell” the land for its ag value to a beginning farmer or other identified group member. Specifically allow for participating entities to apply for ACEP/ALE funding for lands under the “buy, protect, sell” concept and clarify that the participating entity could not hold the easement on the land they own in fee.

6. *Improve Forest Land Participation in ALE:*

- a. Add statutory language that allows the Secretary to waive the rule limiting ALE easements of no more than two-thirds of property covered in forest when the Secretary determines the land is of significant conservation value and merits such a waiver.
- b. Create a “forests of special environmental significance” category that allows projects to receive up to 75 percent cost-share, similar to the current “grasslands of special environmental significance” cost-share.

7. *Ranking Criteria and Eligibility:*

Add that state priorities be a consideration for establishing evaluation and ranking criteria. Adding this additional criterion gives additional authority to the States to provide input into the evaluation and ranking criteria. Suggested language (add a new subsection (iii): “(3)(B)(iii) providing discretion to State Conservationists and State Technical Committees to adjust evaluation and ranking criteria to account for geographic nuances as long as such adjustments meet the purposes of the program and continue to maximize the benefit of Federal investment under the program.”

8. *Allow effective ongoing administration of the easement terms*

Add a new subsection that allows for effective ongoing administration of the conservation easement terms. This section should explicitly permit amendments that (1) have a neutral effect on or increase the conservation values; (2) do not confer an impermissible private benefit; (3) are consistent with the original intent of the easement; and (4) are agreed to by both the landowners and entity.

9. *Violations.*

Revise Section 1265B(b)(4)(E)(ii) to limit when the Secretary could require a refund plus interest from an eligible entity.

Increase Overall Conservation Title Funding

LTA supports an increase in overall conservation title funding. The conservation title took a significant cut during the last farm bill and continues to be cut yearly by CHIMPs and sequestration. Some programs such as ACEP are far below their historic levels of funding. LTA supports working lands conservation programs that allow farmers to continue farming and give them the incentives to do so in an environmentally sound way.

Increase Regional Conservation Partnership Program Funding

LTA believes that RCPP's targeted, partnership-based approach to conservation is essential for the achievement of outcomes on a landscape or watershed scale. Thus, we believe that greater funding is warranted.

Forestry Title Recommendations

1. *Restore Mandatory Funding for Healthy Forest Reserve Program*
2. *Expand Eligibility for Working Forests in HFRP*
 - a. Clarify that eligible lands are "private forest land or land being restored to forest land."
 - b. Clarify eligibility of forests that already provide suitable species habitat may be enrolled in permanent conservation easements – this is necessary to avoid a situation where only "acres in need of restoration" are eligible, and not acres in good condition, but still at risk of conversion to another use; and
 - c. For the permanent easement option, if the land is already managed for species protection, then the landowner should be exempt from the restoration component.
3. *Allow Tribes to Sell Permanent Conservation Easements on Lands They Own in Fee. This would mirror the authority tribes have under ACEP.*

Other Titles of the Farm Bill

Reauthorize Mandatory Funding for Farmers Market and Local Food Promotion Program

The Farmers Market and Local Foods Promotion Program (FMLFPP) is a grant program administered by the USDA's Agricultural Marketing Service (AMS), and was first introduced in the 2002 Farm Bill. It includes two types of grants: direct marketing grants, which assist in the development, improvement, and expansion of direct-to-consumer outlets (e.g. farmers' markets and community supported agriculture (CSAs)); and intermediated marketing grants, which assist in the development, improvement, or expansion of local and regional food business enterprises (e.g. food hubs) and value-added production enterprises (e.g. shared-use kitchens). Mandatory funding for FMLFPP was set at \$33 million in the 2014 Farm Bill.

Reauthorize Funding for Food Insecurity Nutrition Incentives Program

Newly created in the 2014 Farm Bill, the Food Insecurity Nutrition Incentives Program (FINI) provides competitively awarded grants to nonprofit organizations and government agencies, including agricultural cooperatives, farmers markets, community-supported agriculture programs (CSAs), SNAP-authorized retailers, emergency feeding organizations, community health organizations, and economic development corporations, among others, for projects that increase the purchase of fruits and vegetables by low-income consumers participating in the Supplemental Nutrition Assistance Program (SNAP) by providing cash incentives at the point of purchase.

The 2014 Farm Bill provides FINI with \$100 million in mandatory funding. These grants help low-income consumers participating in the Supplemental Nutrition Assistance Program (SNAP) purchase more fresh fruits and vegetables through cash incentives that increase their purchasing power at locations like farmers markets.