

# Agriculture Improvement Act of 2018

## Summary of ACEP and ALE

The Agriculture Improvement Act of 2018, more commonly known as the Farm Bill, reflects the vast majority of our recommendations related to the Agricultural Conservation Easement Program (ACEP) and Agricultural Land Easement Program (ALE).

### Funding

- Increases funding for ACEP from \$250 million annually to \$450 million annually.
- Repeals the 7 percent donor program requirement, meaning all ACEP funding will stay with the ACEP program.

### Policies

The Farm Bill includes multiple provisions aimed at streamlining the ALE process.

- ALE Plan. Eliminates the requirement for an ALE plan thereby removing an unnecessary hurdle to protecting lands. It does, however, retain the requirement for an ALE plan for highly erodible lands.
- Matching Funds. Creates additional flexibility for meeting the non-federal cash-match requirement by allowing landowner donation and expenses to satisfy the match requirement.
- Certified Entities. Retains the current criteria and process to become a certified entity while clarifying that certified entities can write their own minimum-deed terms. Additionally, creates new options to allow accredited land trusts and State Departments of Agriculture to be recognized as certified entities if they meet certain criteria. This criteria includes the acquisition of at least 10 agricultural conservation easements through ALE or predecessor programs.
- Recognize Geographic Differences. Allows the Secretary to adjust evaluation and ranking criteria to account for geographic nuances so long as it meets the purposes of the program and continues to maximize the benefits of federal investment under the program.
- Mineral Rights. Clarifies that the sub-surface mineral rights of lands with an ALE easement may be developed so long as such development does not harm the agricultural use or conservation values of the land. Additionally, mineral rights holders are required to reclaim and restore the land at cessation of any mineral operations. Other conditions to develop sub-surface mineral rights stipulate that such operations:
  - Have a limited and localize impact;
  - Don't materially alter or affect the existing topography;
  - Comply with a sub-surface mineral development plan that includes a plan for remediation of the impacts to the agricultural use and conservation values of the land and is approved by the Secretary prior to initiation of mineral development activity;
  - Don't use any surface mining method;
  - Fall within the impervious surface limits of the easement; and
  - Use practices and technologies that minimize the duration and intensity of impacts to the agricultural use and conservation values of the land.

- Administration of Easement Terms. Modernizes language regarding the subordination, exchange, modification or termination of an ALE easement to clarify requirements for each to occur. All require landowner and eligible entity consent.
  - Subordination of easements must increase or have a limited negative effect on conservation values, minimally affect the acreage and be in the public interest or further the administration of the program.
  - Modification and exchange of easements must have a neutral effect on or increase conservation values, be consistent with the original intent of the easement and be consistent with the purposes of the program. The bill prohibits the Secretary from increasing the payment to the eligible entity in the event of an easement modification or exchange.
  - Termination of easements may occur in very rare circumstances and must be in the best interest of the federal government, address a compelling public need for which there is no practical alternative even with avoidance and minimization, and further the administration of the program.
  - Report language clarifies that any termination of a qualified contribution by the Secretary shall be in accordance with the requirements of the Department of Treasury Regulations.
- Right of Enforcement. Clarifies that the Secretary's right of enforcement only extends to inspection when the eligible entity fails to provide monitoring reports on time or if there is a "reasonable and articulable belief" that the easements terms and conditions have been violated. Requires advance notice to the landowner and eligible entity so they may participate in the inspection.
- Buy-Protect-Sell. Permits eligible entities to purchase farm or ranch land with the intent of holding for a limited period of time, use ALE to secure an easement to protect the property and sell the land to a farmer or rancher at the agricultural value.