



# LAND TRUST ALLIANCE

## FARM BILL RECOMMENDATIONS



The Farm Bill conservation programs taken in total are the largest single federal source of funding for private land conservation. Farm Bill programs create major opportunities for land trusts to protect high-priority farm and ranch lands, grasslands, wetlands and forests. Permanently protecting these lands is an indispensable tool for private land conservation. Many of the programs provide matching funds to conservation partners, so federal investments go further to protect America's productive land.

As Congress considers the 2018 Farm Bill reauthorization, the Alliance will be working on behalf of its 1,000 land trust members on the following priorities.

### **Authorize Agricultural Conservation Easement Program Funding at \$500 Million Per Year**

Our top priority is funding the Agricultural Conservation Easement Program (ACEP) at \$500 million per year. The current Farm Bill funds ACEP at this level in FY17, but funding drops to \$250 million annually in FY 18 and beyond. That is a 66% decline compared to the historic average of \$732 million. At a recent Senate Agriculture Committee hearing, USDA said \$250 million per year would only fund 7% of demand for this vitally important program.

### **Streamline and Increase the Flexibility of the Agricultural Land Easements (ALE) Program**

The Alliance is committed to streamlining ALE to ease administrative burdens, and provide flexibility for producers, land trusts and the NRCS. The result would save the federal government significant time and money, while making the process more expeditious for producers. All too often it can take as long as 18 months or longer to complete the easement process.

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

##### **a. Remove ALE Plans as part of the minimum deed terms**

Since 2014 the NRCS requires the development of a robust and comprehensive agricultural land easement plan as part of the minimum deed terms. This plan is much more onerous than a traditional conservation plan and could include both required and recommended practices. Including such a plan in the minimum deed terms. The Alliance advocates for not making the ALE plan a term of the easement, which was the case prior to the 2014 Farm Bill.

##### **b. Clarify Contingent Right of Enforcement**

The Alliance is concerned that the Secretary has excessive authority for inspection and enforcement. The Alliance proposes to add language to limit the Secretary's authority to trigger the contingent right of enforcement and clarify that the right only extends to a right of inspection when the holder of the easement fails to provide inspection reports in a timely manner.

##### **c. Explicitly allow subsurface mineral development as long as it does not hurt conservation values**

The Alliance promotes adding language that explicitly states that subsurface mineral development can occur as long as it does not negatively impact the agricultural or conservation values.

**d. Allow easement holders to participate in ecosystem markets**

As currently administered, easements may restrict landowners from participating in any other environmental markets, such as ecosystem services markets. The Alliance proposes to add language that explicitly states that the easement does not eliminate or restrict the landowners participation in any other environmental market.

2. *A Robust Certification Process*

**a. Allow Certified entities to write their own minimum deed terms**

Allowing more flexibility to set deed terms is critical, as different states have different goals and statutes. The program should allow easements to best suit the needs of the state and land trust. One-size-fits-all terms are difficult, as California may have significantly different goals and statutes than, say, Texas. The Alliance will push to clarify that eligible entities are authorized to use their own terms and conditions for Agricultural Land Easements as long as the Secretary determines the terms and conditions “... are consistent with the purposes of the program and are consistent with the agricultural activities to be conducted.”

**b. Revise Certification Criteria**

The Alliance believes accredited land trusts that have completed a minimum of five acquisitions using program funds should qualify as an entity that meets the Certification Criteria.

3. *Matching Funds*

Under current regulations, landowner donations and expenses are not allowed to satisfy match requirements, making it very difficult for some landowners to access this program, particularly those in states such as Texas, Kansas and Alabama that have little or no statewide conservation funding source to help towards the match. The Alliance supports allowing the landowner donation and landowner expenses related to the conservation easement transaction to satisfy matching requirements for ACEP investments. This would open access to the program in these states, resulting in the protection of more productive lands.

4. *Adjusted Gross Income (AGI) Limitation*

Currently 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. Yet, unlike financial assistance payments, 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. The Alliance encourages adding an exemption to the AGI limitations for ACEP.

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. The Alliance supports specifically allowing 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. Under the “buy, protect, sell” 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 agricultural value to a beginning farmer or other identified group member.

6. *Improve Forestland Participation in ALE*

- a. Currently land that is more than two-thirds forested is not eligible for the ALE program. The Alliance promotes adding 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 to merit such a waiver.
- b. Currently forests are not granted the same cost-share opportunities as other ecosystems. The Alliance encourages creating a “forests of special environmental significance” category that allows projects to receive up to 75% cost-share, similar to the current “grasslands of special environmental significance” cost-share.

7. *Ranking Criteria and Eligibility*

The Alliance supports adding that state priorities be a consideration for establishing evaluation and ranking criteria. The Alliance suggests adding language to grant State Conservationists and State Technical Committees the discretion 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 term*

The current program limits administration of conservation easement terms. The Alliance calls for adding a new subsection that 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*

Currently the Secretary has expanded power to require a refund plus interest. The Alliance advocates revising the Farm Bill to clarify that in instances of fraud or negligence the Secretary may require a refund plus interest from the eligible entity.

**Increase Overall Conservation Title Funding**

Farm Bill conservation programs help improve water quality and soil health, reduce erosion, conserve wildlife habitat and permanently protect our most valuable and productive lands. Despite the proven benefits of these programs in protecting our natural resources, the Conservation Title experienced major cuts in the 2014 Farm Bill, as well as repeated annual cuts to programs through sequestration and through the appropriations process. The next Farm Bill should provide an increase in Conservation Title funding to help address our natural resource concerns and producer demand.

**Increase Regional Conservation Partnership Program (RCPP) Funding**

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

**Forestry Title Recommendations**

1. *Restore Mandatory Funding for Healthy Forests Reserve Program (HRFP)*

The Healthy Forests Reserve Program (HFRP) helps landowners restore, enhance and protect forestland resources on private lands through easements and financial assistance. HRFP aids the

recovery of endangered and threatened species under the Endangered Species Act, improves plant and animal biodiversity and enhances carbon sequestration. The Alliance supports reauthorization of HFRP with mandatory funding of \$12 million a year.

2. *Expand Eligibility for Working Forests in HFRP*

- a. Currently lands that are in the process of being restored to forestland are not eligible for HFRP. The Alliance is pushing to explicitly state that eligible lands are “private forestland or land being restored to forestland.”
- b. Currently, there are situations in which only “acres in need of restoration” are eligible, excluding acres that are in good condition but still at risk of conversion to another use. The Alliance advocates clarifying that forests that already provide suitable species habitat are eligible to be enrolled in permanent conservation easements.
- c. Currently, in order to qualify for a permanent easement, a landowner is responsible for the restoration component regardless of whether the land is already managed for species protection. In such cases the Alliance supports exempting landowners from the restoration component if the land is already managed for species protection.

3. *Allow Tribes to Sell Permanent Conservation Easements on Lands They Own in Fee*

In order to mirror the authority tribes have under ACEP, the Alliance advocates allowing tribes to sell permanent conservation easements on land they own in fee.

**Other Titles of the Farm Bill**

1. *Reauthorize Mandatory Funding for Farmers Market and Local Food Promotion Program*

The Farmers Market and Local Food 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). The Alliance supports maintaining mandatory funding for FMLFPP, which was set at \$33 million in the 2014 Farm Bill.

2. *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), Supplemental Nutrition Assistance Program-authorized (SNAP) 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 SNAP by providing cash incentives at the point of purchase, such as farmers markets.

The Alliance supports the continuation of the \$100 million in mandatory funding for FINI provided in the 2014 Farm Bill.