

# AGRICULTURAL LAND PROTECTION PARTNERSHIP

## Farm Bill Priorities

### AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)

Over 11 million acres of productive farmland and rangeland in the U.S. were lost to, or threatened by, development in the first 15 years of the 21<sup>st</sup> century alone—an average of 2,000 acres a day.<sup>i</sup> New research by American Farmland Trust (AFT) indicates that the U.S. is projected to lose an additional 18.4 million acres by 2040.<sup>ii</sup> **The Agricultural Conservation Easement Program (ACEP) is the only federal program dedicated to stemming this loss and protecting America's private working lands** which are foundational to U.S. food security and to our environment, economy, and local communities.

The benefits of ACEP go well beyond protecting working lands in perpetuity. The sale of an agricultural conservation easement provides a farm or ranch family with a way to realize liquidity from their land without having to sell all or a portion of it for development. Proceeds from easement sales enable farmers and ranchers to expand or diversify their operation, finance retirement or pay down debt, or facilitate the transfer of the farm or ranch to a family member. ACEP investments also help grow local economies and jobs in the community. A [2022 study](#) jointly led by USDA's Natural Resources Conservation Service in Montana, the Montana Association of Land Trusts, and the Heart of the Rockies Initiative found that between 2014 and 2021, every federal dollar of easement financing invested in Montana's farms and ranches through ACEP yielded \$1.89 of economic activity. The \$109 million ACEP investment produced a total economic impact of \$182 million, supported 1,057 local jobs and \$41.5 million in labor income, and contributed \$99 million to the state's GDP.

Additionally, escalating land values and competition for land from developers and non-farming investors are putting land ownership out of reach for many producers, both for those with established operations seeking to expand and, even more so, for undercapitalized producers and those just getting underway. By limiting its future use to agriculture, ACEP typically makes land more affordable, helping to create pathways for ownership and wealth creation for a new generation of producers. The Buy-Protect-Sell option within ACEP further helps to facilitate land access, enabling land trusts to step in and buy land, protect it through ACEP, and sell the protected land to a farmer or rancher. Land trusts often work with the incoming producer, especially those who are young, beginning and/or undercapitalized, to provide the wrap-around support vital to growing a successful farm enterprise.

### RECOMMENDATIONS

#### Significantly increase program funding to address growing development pressure on rural land.

ACEP consists of two subprograms, Wetlands Reserve Easements (WRE) and Agricultural Land Easements (ALE). Funding for ACEP-ALE easement acquisitions represents a small percent of the \$450 million annual funding for ACEP—from 2019-2021, ALE received an average of just \$114 million annually. This level of funding, spread across 50 states, is insufficient to meet high program demand; it also deters applications, as program partners and landowners are reluctant to invest the thousands of dollars needed to prepare projects for applications that are unlikely to be funded. A significant increase in program funding, along with the additional recommendations below, will offer more farmers and ranchers a means to gain equity from their land while protecting it for future generations.

### **Modify the federal share of the easement value to:**

- **Increase the federal share to 65% for general ALE easements and 80% for ALE Grasslands of Special Significance (GSS) easements.**
- **Provide a lower federal share option of 25% for easements held only by the partner entity.**

Lands with high agricultural productivity and conservation values are being lost because of the financial barriers that many landowners face in accessing ACEP-ALE. Currently, NRCS can only contribute 50% of the easement value unless a property is designated as “Grasslands of Special Significance,” in which case the federal share can increase to 75%. A general increase in the federal share will enable more farmers, ranchers, and landowners to participate in the program, especially in parts of the country where matching funds are difficult to secure.

At the same time, an option that offers a lower federal share of easement value for easements held only by the state or local partner could provide a meaningful alternative. Some states have had trouble reconciling their program’s easement deed terms with the ACEP minimum deed terms; this problem would be resolved if the easement did not include a federal executory interest. Additionally, some landowners are more amenable to an easement that is held solely by a non-governmental entity. There is precedent for this lower federal share option; a 25% federal share for an entity-only held easement is currently available through the Regional Conservation Partnership Program (RCPP). This option could be limited to only certified entities or made available to all entities.

### **Cover required project costs incurred by landowners and allow advanced payment on approved project costs for limited resource landowners.**

Transaction costs associated with the sale of an easement through ACEP-ALE can be significant, and a barrier to participation for many landowners, especially those with limited resources. Expenses associated with title reviews, surveys, inspections, and appraisals can reach \$80,000 and even higher for larger properties. The next Farm Bill should cover these project costs and provide an advance on these payments for limited resource landowners.

### **Improve program efficiency through an enhanced certification process for experienced land trusts and public Purchase of Agricultural Conservation Easement (PACE) programs that:**

- **Allows automatic certification for accredited land trusts and statutorily authorized public PACE programs that have successfully completed 5 ACEP-ALE or predecessor program projects;**
- **Allows a certified entity to sponsor projects in coordination with a non-certified entity;**
- **Minimizes the administrative reviews required by NRCS both before and after project completion.**

Established in the 2008 Farm Bill, certification was intended to streamline program delivery and reduce administrative burdens on NRCS by recognizing the expertise of certain program partners to acquire and steward agricultural conservation easements. The 2018 Farm Bill refined the certification process, providing two pathways to certification—one for accredited land trusts and state Purchase of Agricultural Conservation Easement (PACE) programs, and a separate one for other program partners. While certification is reducing closing times on easement acquisitions by an average of six months, it is still an underused tool, with only 8 certified entities nationwide. Allowing automatic certification for certain qualifying entities—and allowing certified entities to take responsibility for projects in

partnership with a non-certified entity—will incentivize certification. In addition, allowing certified entities to approve minor administrative actions on ACEP-funded easements will reduce administrative burdens on NRCS staff and delays that have frustrated landowners.

### **Eliminate the Adjusted Gross Income (AGI) eligibility requirement and exempt federal and state conservation easement payments from future AGI calculations.**

Unlike conservation cost-share programs, a payment through ACEP is not a subsidy but a real estate transaction and a purchase of a specific property interest based on appraised fair market value. Moreover, imposing AGI eligibility requirements on landowners for ACEP defeats the program purpose of conserving land with the highest agricultural productivity and conservation values. The protection of threatened and high-value farmland and ranchlands should not be constrained by the income of the landowner. Additionally, AGI checks administered through the Farm Services Agency and the Internal Revenue Service are slow and cumbersome and are a barrier to program delivery.

Payments made through ACEP—or any other federally or state-administered conservation program—should also be excluded from AGI calculations for Farm Bill conservation program eligibility. Without this exemption, producers and landowners on some of our nation’s best agricultural land are unable to enroll in federal conservation programs because of a one-time easement payment that puts them temporarily over the AGI threshold. This creates a disincentive for conservation.

### **Foster more Buy-Protect-Sell (BPS) projects by:**

- **Allowing for multiple project partners;**
- **Identifying land access as a specific purpose of ACEP;**
- **Enabling land owned on an interim basis by a public entity to qualify;**
- **Clarifying that Buy-Sell-Protect projects should be treated as regular ALE projects;**
- **Leaving the sales price of the protected land to be negotiated between the project partner and the purchasing farmer or rancher.**

Buy-Protect-Sell projects, wherein a land trust purchases land in fee, protects the land with an easement, and sells the protected land to a farmer or rancher, can be a powerful pathway to land ownership for undercapitalized producers who might not otherwise be able to afford land. While the 2018 Farm Bill specifically authorized the use of Buy-Protect-Sell (BPS) projects within ACEP, no BPS project has been completed to date through the program. This is because additional statutory clarity is needed to address ambiguous statutory provisions and provide clearer direction to NRCS. This clarity includes authorization for multiple project partners in a BPS transaction and elimination of the sales price restriction on the initial sale of the protected land, allowing it to be a negotiated price between the land trust and the qualified farmer or rancher buyer. Statutory language must also clarify that projects where a land trust sells the land to a qualified farmer—and the farmer then protects the land with an ACEP-funded easement—should be treated as a traditional ALE project. State and local governments are also playing more of a role in facilitating land transfers to next generation producers. Enabling land owned on an interim basis by a government agency to qualify for BPS would increase public-private BPS opportunities.

### **Provide additional program clarity around easement administration actions and alternative valuation methodologies.**

The 2018 Farm Bill provided important direction around easement administration actions. However, additional statutory language is needed to (1) clarify that easement violations can be corrected using modifications (when appropriate), (2) allow modifications that align with program purposes and address changed circumstances that adversely impact agricultural viability, (3) create specific categories of easement modifications (such as “amendments”, “supplements”, and “corrections”), and (4) provide clarity on where the approval authority lives for the different types of modifications. Consistency in easement amendment and modification practices across the realm of conservation programs is critical to avoid costly and unnecessary litigation as well as for the proper long-term care of perpetual conservation easements and the health of conservation organizations and public agencies that are charged with perpetual stewardship obligations.

The appraisal process provides a critical safeguard against fraud, waste, and land speculation but is one of the significant bottlenecks in completing ACEP-ALE projects, in part because of a shortage of qualified appraisers across the country. While the ACEP statute allows NRCS to consider industry-approved alternative valuation methods, the program would benefit from additional flexibility to consider alternative value substantiation methodologies used by other federal agencies, such as Adjusted Assessed Land Valuation (AALV), new models for valuation being developed by universities, as well as methods of valuing ecosystem services associated with protected farmland and ranchland.

### **DECREASING BARRIERS FOR HISTORICALLY UNDERSERVED LANDOWNERS**

Heirs’ property is a form of fractionated ownership that occurs when the original landowner dies without a will. The owner’s property passes to their descendants, who then own it “in common.” This lack of sole ownership not only limits the ability of owners to build wealth, borrow money, and qualify for government programs, it also makes the property vulnerable to development through forced sales. The federal government has taken recent steps to address heirs’ property issues, including through a relending program established in the 2018 Farm Bill. However, a Farm Bill change allowing funding for agricultural conservation easements on heirs’ property could help stem the loss of this type of land to development.

Similarly, in the Western U.S., challenges to clear title exist for Latinx and Hispano producers because of their property being titled through land grants that pre-dated U.S. statehood. When the United States gained land after its war with Mexico, a portion of the Treaty of Guadalupe Hidalgo included a recognition of land grants that were made by the governments of Spain and Mexico. Settlers in these land grants were awarded strips of land called varas. A “vara” is a Spanish unit of measurement equal to about 33 inches. Settlers were given land in strips 50-100 varas wide and several miles long. These lots were drawn perpendicular to the stream allowing settlers equal access to water and the use of varied terrain for grazing and crop production. As these settlers of Spanish, Mexican, and Mestizo heritage became U.S. citizens and became subject to U.S. property law, challenges of integration with the Public Land Survey System and issues with cultural mistrust of the legal system resulted in unique challenges to clear title. These challenges are expensive to resolve and may prevent the descendants of these settlers from participating in agricultural conservation easements without allowances for advanced payment.

## RECOMMENDATION

**Through ACEP or other USDA program, provide advanced payment for agricultural conservation easements and transaction costs on qualifying land for resolution of title on heirs' property and land grant property.**

Resolving title on heirs' and land grant property can be expensive, as it may require purchasing portions of ownership from multiple generations of a family. The proceeds from the sale of an easement can help to fund the consolidation of ownership; however, the sale of an easement through ACEP requires clear title to the property prior to the easement closing. Whether through ACEP or another USDA program, an initiative that allows for advanced payment for agricultural conservation easements on qualifying lands and expanded considerations of eligible transaction costs could provide the capital needed to resolve title while ensuring that that land can remain in the family.

## REGIONAL CONSERVATION PARTNERSHIP PROGRAM (RCP)

The Regional Conservation Partnership Program (RCP) is designed to foster innovative landscape-scale conservation projects through expanded public-private partnerships. Land conservation organizations and public agencies have used RCP to target working lands protection efforts to important agricultural regions and to incentivize conservation planning and practice adoption on permanently protected farmland and rangeland. RCP is a valuable, complementary tool to ACEP for permanent working lands protection.

## RECOMMENDATION

**Expand ACEP certification to RCP, allowing entities certified under ACEP to use the same streamlined easement acquisition process as allowed through ACEP, and to use their approved conservation easement templates for RCP, should they choose to do so.**

The 2018 Farm Bill made a number of changes to RCP, including ones designed to encourage innovation in working lands protection and additive conservation. Since then, however, only a handful of easement acquisitions have occurred through RCP, stymied by new program rules that require different acquisition procedures for agricultural land protection, even for experienced state and local land protection partners. Allowing ACEP's certification process to expand to RCP will allow these experienced partners to deploy RCP resources expeditiously, delivering faster conservation outcomes.

## FOREST LEGACY PROGRAM (FLP)

The Forest Legacy Program (FLP) supports the protection of privately owned forest lands through conservation easements or land purchases. It provides economic incentives to landowners to keep their forests as forests and preserve the many benefits they provide, including recreation opportunities, water supply, wildlife habitat, and timber and other forest products.

## RECOMMENDATION

### **Allow accredited land trusts to hold easements and land funded through the Forest Legacy Program.**

Currently, only government entities can hold easements and land acquired through FLP, which has limited the scope and impact of the program. Many landowners are much more amenable to entering into perpetual conservation easements with non-governmental entities. Additionally, many states prefer to work with land trusts as their partners to hold those interests. Allowing states the option to convey FLP-funded land interests to land trusts would align FLP with other successful federal-state conservation funding programs like ACEP and USFWS Section 6, among others.

## FARMLAND PROTECTION POLICY ACT (FPPA)

Enacted in 1980, the Farmland Protection Policy Act (FPPA) seeks to minimize the impact that federal programs have on conversion of farmland to nonagricultural uses. It is also intended to assure that, to the extent practicable, federal programs are administered to be compatible with state, local, and private programs and policies that protect farmland. Projects are subject to the FPPA if they might irreversibly convert farmland or rangeland (directly or indirectly) to non-agricultural use and are completed by a federal agency, or with assistance from a federal agency.

## RECOMMENDATION

### **Amend the Farmland Protection Policy Act to define permanent conversion (including conversion of federally owned agricultural land), require agencies to report on *actual* conversion, and prohibit conversion of permanently protected agricultural land unless there is no feasible alternative.**

The FPPA statute does not define “conversion.” While its rule states that conversion of farmland to non-agricultural uses does not include the construction of on-farm structures, it has no affirmative definition of conversion other than a reference to “irreversible” conversion. Greater definition of what constitutes irreversible conversion would provide needed guidance to federal agencies.

FPPA data collection and reporting can also be improved. While the statute envisions that agencies report annually to USDA on actual conversion resulting from their actions, current USDA regulations require only that agencies report to USDA on proposed conversion. The statute also requires that USDA provide an annual report to Congress. Since FY 2015, this report has not been delivered to Congress.

FPPA should also be strengthened to provide additional protection for agricultural lands that have been permanently protected with a conservation easement. Federally funded conversion of agricultural land under a perpetual conservation easement held by either a public PACE program or land trust should be allowed only if no feasible alternative exists.

## OTHER PROGRAMMATIC RECOMMENDATIONS

### **Establish a dedicated source of flexible funding that can be used by state and local partners to provide technical assistance to farmers, ranchers, and landowners for business planning, land access, and farm transfer and succession planning and financial assistance for land acquisition.**

An enormous generational transfer of agricultural land and assets is underway in the U.S., and with escalating land values and competition for agricultural resources, land is especially vulnerable to

development and consolidation as it transfers. Public and non-governmental service providers across the country are building capacity to help producers and landowners navigate the complexities of transfer and succession and to support next generation producers in identifying and accessing land. Some are building innovative financing models to help next generation and underserved producers purchase land. Others are coordinating networks that provide a range of business planning support to early-stage producers, recognizing the value of customized technical assistance to long-term business viability. Flexible funding is needed to expand this important work at the state and local level.

**Prioritize lands enrolled in ALE and predecessor programs for NRCS conservation planning and cost-share programs.**

Working lands protected through ACEP will remain available for food and fiber production, carbon sequestration, and other ecosystem services in perpetuity. As such, this land should be prioritized for conservation planning and for participation in programs such as EQIP, CSP, and RCPP. This same prioritization should also apply to agricultural land that has been permanently protected through federal predecessor programs (e.g., Farm and Ranch Lands Protection Program) and state or local Purchase of Agricultural Conservation Easement (PACE) programs. Producers farming permanently protected agricultural land have been shown to have a high rate of conservation practice adoption, highlighting the importance of priority enrollment.

**THESE PRIORITIES ARE ENDORSED BY THE FOLLOWING ENTITIES WHO HAVE A SHARED COMMITMENT TO WORKING LANDS PROTECTION**

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| American Farmland Trust                      | Oregon Agricultural Trust              |
| California Rangeland Trust                   | Partnership of Rangeland Trusts        |
| Colorado Cattlemen’s Agricultural Land Trust | Pacific Forest Trust                   |
| Colorado Open Lands                          | Pennsylvania Department of Agriculture |
| Delaware Department of Agriculture           | Texas Agricultural Land Trust          |
| Grand Traverse Regional Land Conservancy     | Wyoming Stock Growers Land Trust       |
| Iowa Natural Heritage Foundation             | Vermont Housing and Conservation Board |
| Montana Land Reliance                        | Vermont Land Trust                     |

<sup>i</sup> J. Freedgood, M. Hunter, J. Dempsey, and A. Sorensen, “Farms Under Threat: The State of the States.” AFT, May 2020. <https://farmlandinfo.org/publications/farms-under-threat-the-state-of-the-states/>.

<sup>ii</sup> M. Hunter, A. Sorensen, T. Nogeire-McRae, S. Beck, S. Shutts, and R. Murphy, “Farms Under Threat 2040: Choosing an Abundant Future.” American Farmland Trust. June 2022. <https://farmlandinfo.org/publications/farms-under-threat-2040/>.