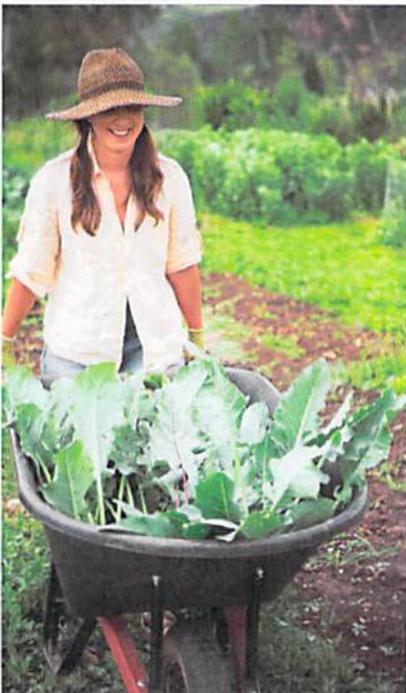


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Agricultural Conservation Easement Program (ACEP)

Farm Bill Policy Recommendations



On behalf of working farmers and ranchers, American Farmland Trust and a national coalition of land trusts identified four critical policy areas for improving federal farmland protection in the upcoming Farm Bill. They are: increasing ACEP funding; improving ACEP Agricultural Land Easement (ALE) program efficiency; increasing participation to protect the most at risk farmland and ranchland; and protecting the future viability of agricultural land under easement.

1. Increase ACEP funding

Despite the many benefits of protecting working agricultural lands, ACEP funding saw a large decrease in the 2014 Farm Bill. The three previous programs that were combined to create ACEP were funded at an average total of \$732 million annually from 2009–2012. In contrast, ACEP funding drops to \$250 million annually in FY18 (and future years). This decrease in funds creates difficulty for partners who rely on ACEP funds to leverage state and local funding for farmland protection.

Authorize ACEP at \$500 million per year.

The USDA Natural Resources Conservation Service (NRCS) estimates that only seven percent of ACEP applications will be funded if the baseline for ACEP is not increased. The land trust ALE Coalition has determined that ACEP must be authorized at a minimum of \$500 million per year to adequately protect the nation's working lands.

2. Improve ACEP-Agricultural Land Easement (ALE) program efficiency

The land trust ALE coalition has identified the need to streamline ACEP-ALE to ease administrative burdens and provide flexibility for producers, land trusts and NRCS. Such streamlining would save the federal government significant time and money, while making the process easier and timelier for a broad range of farmers and ranchers around the country with different production needs.



Authorize a robust certification process.

Allow entities with the demonstrated experience and financial stability to achieve certification to use their own deed terms if the statutory deed requirements are met. Allowing certified entities to use their own terms provides for geographical nuances and greater flexibility for farmers and ranchers to craft easements to fit their needs.

Address inconsistencies in the ALE plan requirement.

- **REMOVE ALE PLAN AS PART OF THE MINIMUM DEED TERMS.** Unlike a permanent easement, the ALE plan is meant to be a flexible document that addresses an operation's needs at a specific point in time. Including the flexible ALE plan in the legally binding minimum deed terms of the permanent easement creates confusion and administrative challenges.
- **REVISE THE REQUIREMENTS FOR ALE PLANS.** ACEP-ALE is a program designed to protect agricultural land resources. ALE plans should not require additional conservation beyond conservation compliance measures.

Clarify the Contingent Right of Enforcement.

The right of enforcement should not extend to a right of inspection *unless* the holder of the easement fails to provide inspection reports in a timely manner.



3. Allow the protection of the most at-risk farmland and rangeland.

Eliminate matching funds requirements.

This adjustment would open access to the program to additional states where matching conservation funding is not currently readily available, for example in states like Texas and Kansas where land trusts are active but state sources of matching funds do not exist. Even when entities do not provide an upfront cash match for easement purchase, they commit resources to stewarding the easement in perpetuity. Landowner donation and landowner expenses related to the conservation easement transaction should satisfy matching requirements for ACEP-ALE investments.

Address the Adjusted Gross Income (AGI) limitation for ACEP-ALE.

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. When critical lands owned by individuals who do not meet the AGI eligibility requirement are ineligible for enrollment in ACEP, conservation benefits are lost and vulnerable lands remain unprotected. The AGI limitation may be addressed by:

- Exempting ACEP-ALE from the AGI limitation
- Allowing a waiver for ACEP-ALE projects



Allow buy-protect-sell transactions.

A widely acknowledged problem for beginning farmers is the high cost of purchasing land. One way to address this is to allow “buy-protect-sell” transactions. 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 at a more affordable agricultural value to a farmer. Specifically, Congress should allow participating entities to apply for ACEP-ALE funding under the “buy-protect-sell” concept and clarify that participating entities could not hold easements on land they own in fee.

4. Protect future viability of eased agricultural land.

Allow farmers and ranchers to pursue opportunities for improving farm viability.

Clarify that non-agricultural uses that do not negatively impact the agricultural operations or conservation values of the property (e.g. a bed and breakfast operated out of a permitted structure, etc.) are allowed.

Allow owners of protected farmland to participate in ecosystem markets.

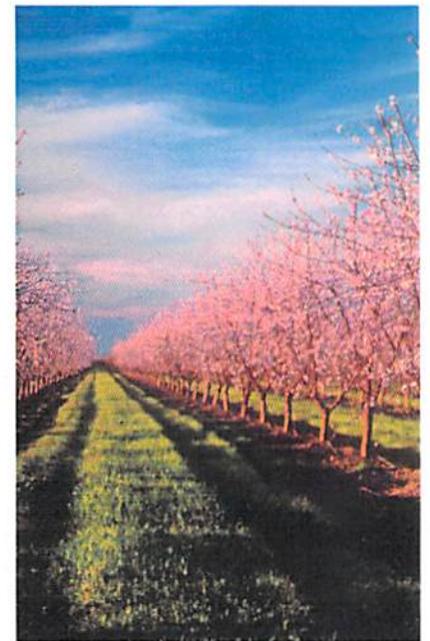
Explicitly state that easements do not eliminate or restrict the grantor's participation in any other environmental market (i.e. ecosystem services markets), and that “stacking” and “additionality” are permitted, *so long as* the terms of the easement continue to be met and additive conservation gains are made.

Allow effective ongoing administration of the easement terms.

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.

Explicitly allow mineral development if it does not hurt conservation values.

Add a new subsection explicitly stating that mineral development can occur if it complies with the limited, localized and not irremediably destructive of the conservation values standard from the treasury regulations.



COALITION PARTNERS

