

The Honorable Debbie Stabenow
Chairwoman

The Honorable Pat Roberts
Ranking Member

Senate Committee on Agriculture,
Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC, 20510

March 1, 2012

Dear Chairwoman Stabenow and Ranking Member Roberts:

The Land Trust Alliance (the Alliance) would like to submit this testimony for the record of your hearing on conservation programs in the 2012 Farm Bill.

The Alliance promotes voluntary private land conservation to benefit communities and natural systems. We work with more than 1,700 local, state and national land trusts across America. The Alliance has worked in the past several farm bills to maximize funding for the purchase of conservation easements in the Farm Bill, and to increase land trusts' ability to partner with Natural Resources Conservation Service (NRCS) to deliver these and other federal conservation programs to landowners. The result has been highly leveraged conservation of working lands.

Easement programs like the Farm and Ranch Lands Protection Program (FRPP) and Grassland Reserve Program (GRP), administered by NRCS, are now conserving hundreds of thousands of acres of environmentally and economically important landscapes across America. While our member land trusts and the landowners they work with use many of the farm bill conservation programs, these two easement programs are the two most often identified by Alliance members as critical sources of funding for their conservation work nationwide.

We appreciate the difficult task before you in balancing the need to control federal spending while ensuring that the positive conservation outcomes of past Farm Bills are not casualties of disproportionate cuts. From what we have been told about it, your proposal made to the Joint Select Committee on Deficit Reduction seems to have achieved great strides toward accomplishing this difficult task.

Thank you for considering the following recommendations to increase the effectiveness of the conservation easement programs in the 2012 Farm Bill.

MAXIMIZE FUNDING FOR PERPETUAL WORKING LANDS EASEMENTS

- 1) **Securing funding for perpetual easements** to protect working farms, ranches and forests is the Alliance's top priority for the 2012 Farm Bill.
- 2) **FRPP should be reauthorized** and fully funded with the baseline established in the 2008 Farm Bill. **GRP needs to be reauthorized** with a funding baseline that allows for expansion well beyond its current acreage cap.

Conservation dollars leveraged through local partner match and landowner contributions and invested in perpetual conservation easements are a cost effective way to secure a land base for agricultural economies, benefit wildlife and other important natural resources, secure our national food supply and protect the economic viability and quality of life of many rural communities.

While we haven't seen full details, the proposal for a consolidated "Agricultural Conservation Easement Program" with a distinct leg for "Agricultural Land Easements," seems to be a reasonable framework for ensuring that the important functions of FRPP and GRP remain intact.

EMBRACE MATCH ALTERNATIVES

Requiring cooperating entities to provide a cash match for FRPP or GRP projects does help these programs accomplish more, but it can also discriminate against regions of the country that do not have state or local government funding for conservation and may result in missing strategically important conservation opportunities.

- 1) **Don't limit landowner generosity.** Give landowners the option of donating additional easement value to fulfill the match requirement for NRCS funds. The current requirement for a cash match restricts the use of FRPP and GRP for many landowners and land trusts. State and/or private funds for conservation easement purchases are limited, or simply not available, in many states with great potential for landscape-scale conservation. We support limiting federal funding to no more than 50% of the value of an easement, but believe that allowing match requirements to be satisfied through the broadest possible means will afford NRCS the ability to more strategically target critically important productive lands.
- 2) **Harmonize the GRP match requirements with FRPP to encourage the holding of easements by cooperating entities, like land trusts, reducing upfront and long-term costs to the federal treasury.**
- 3) **Restore the Department of Defense's ability to provide a match for conservation easement programs.** Prior to the 2008 Farm Bill, funding from the Department of Defense (DoD) Readiness and Environmental Protection Initiative (REPI) provided a vitally important source of match for FRPP in numerous states, allowing cooperating entities to purchase conservation easements from farmers and ranchers whose lands also helped insulate military bases from

encroaching development. It also simultaneously advanced important national defense goals. When the 2008 Farm Bill converted FRPP into a grant program, it had the unintended consequence of disallowing use of these funds under the “no federal to federal match” rule. In many cases buffer funds served as the only source of match for cooperating entities. Its loss has effectively shut down use of FRPP in these areas.

- 4) Recognize state conservation tax credits as match for easement programs.** At least fourteen states offer tax credits for donations and bargain sales of conservation easements. The Colorado, Virginia and Georgia tax credits are particularly valuable. These tax credits represent an investment by the state in these easements every bit as valuable as a cash match. They signify a direct state investment in the transaction that should be recognized as a state match for NRCS dollars.

STREAMLINE THE APPLICATION AND APPRAISAL PROCESS FOR FRPP & GRP

Both NRCS and the Alliance members who utilize these programs share the goal of completing projects in a timely and efficient fashion. NRCS instituted a new streamlining effort and we look forward to the improvements they have designed, but we want to ensure that the Farm Bill pays close attention to the following issues:

- 1) Streamline the landowner application processes.** FSA and NRCS now require multiple forms from landowners, some of which require the landowner to register with outside organizations (for administration of AGI requirements and new federal contracting rules). We hope the Farm Bill will direct the administering agencies to simplify these requirements and find a way to better equip landowners to meet them. The current process can be difficult to comply with, particularly for landowners without reliable Internet access. NRCS and FSA are not equipped in every region to effectively help landowners complete these applications. With the elimination of many NRCS offices nationwide, this situation will only grow worse.
- 2) Streamline appraisal practices.** Appraisal reviews are essential to prevent abuse, but **delays in agency appraisal reviews have been the single largest factor in slowing down FRPP projects.** We support recent changes in the final rules, and hope that a new NRCS initiative of contracting with outside appraisal firms will help resolve this problem, but the first results are very mixed. Improving this area is critical to shortening the time needed to close FRPP/GRP transactions.

We strongly advocate for aligning all existing federal requirements regarding conservation easement appraisals. Currently the Internal Revenue Code section 170(h) rules, required for any transaction involving a landowner donation of value, requires appraisals to be completed within 60 days of recording the final documentation. NRCS allows 90 days for appraisal reviews, which plays havoc with closings all across the country, and in many instances has necessitated paying for costly new appraisals and in conflicts where land values have changed in the interim.

- 3) **The method for appraising permanent GRP easements should be patterned after FRPP**, which mirrors the requirements for qualified conservation contributions set in section 170(h) of the Internal Revenue Code. Using averages defined by the Geographic Rate Area Caps (GARC) underpays some landowners and overpays others.
- 4) **If changes are made to project requirements in the new Farm Bill, every effort should be made to minimize the confusion and delays caused by having different projects proceeding under different rules and requirements.** Because FRPP projects have taken so long to close, at one point FRPP projects were proceeding under at least three different sets of rules and requirements. Avoiding a repeat of this situation will be elemental to a successful bill.
- 5) **Allow reimbursement of transaction costs incurred by cooperating entities where it will enable strategically important conservation.** Landowners and cooperating entities have significant direct expenses, such as certified appraisals, surveys, environmental assessments, title searches, geologist reports, and legal fees. We suggest that cooperating entities be entitled to apply for reimbursement of such expenses up to 5% of the appraised value of the conservation easement.
- 6) **Land trusts as well as state and local agencies should be able to be certified, but all land trusts should continue to be eligible for funding from Farm Bill easement programs.** We appreciate the intent of certification to streamline processes for entities that have a demonstrated record of holding and administering easements, including land trusts accredited by the Land Trust Accreditation Commission or their state governments. It is important, however, to continue to allow land trusts and local governments that have not yet worked with NRCS to apply for and receive funding, so the program can expand to new areas.

LEVERAGE PUBLIC-PRIVATE PARTNERSHIPS FOR ALL WORKING LAND EASEMENT PROGRAMS

All working land conservation easement programs should allow the purchase of easements by qualified third party entities, such as land trusts and local governments. Many of our members stand ready to expand the effectiveness of the Forest Legacy Program (FLP) by holding and administering conservation easements under these programs.

ENSURE THAT PROGRAM CONSOLIDATION DOES NOT UNDERMINE PROGRAMMATIC GOALS

In the face of growing budget constraints consolidation of the easement programs is a likely outcome of the upcoming Farm Bill. As such, we ask that the following principles guide the final decision making process:

- 1) Maintain measurable programmatic goals for protecting native grasslands, rangelands, forestlands, and cropland, and for the restoration of and protection of wetlands;

- 2) Promote the cost-effective and politically attractive model of having nonprofits and local governments hold and monitor conservation easements on working lands;
- 3) Keep separate the working lands easement programs and land retirement programs;
- 4) Ensure that reserve interest deeds (such as those used in the Wetland Reserve Program) are not used for the protection of working agricultural lands, as they leave little flexibility for the landowner relying on income from those lands;
- 5) Use a single, simple, appraisal system for all perpetual working agricultural land easements based on determining the fair market value of an easement through an appraisal consistent with the Uniform Standards for Professional Appraisal Practice (USPAP);
- 6) Reinforce that any interest the United States receives in any encumbered property is a secondary “right of enforcement” and not an ownership interest (as was done for FRPP in the 2008 Farm Bill);
- 7) NRCS should administer and fund all conservation easement programs;
- 8) Consolidation should be aimed at making conservation more available to landowners, and not toward reducing funding.

We recognize and appreciate your determination to meet the needs of a growing nation, while embracing the significance of its working landscapes and the landowners who steward them.

Thank you for considering our views regarding these critically important programs.

Respectfully yours,



Russ Shay
Director of Public Policy



Lynne Sherrod
Western Policy Manager

