

April 25, 2012

The Honorable Frank Lucas
Chairman

The Honorable Collin Peterson
Ranking Member

House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

Dear Chairman Lucas and Ranking Member Peterson,

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.

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.

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.

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. There is strong and growing demand for these programs from producers.

- 2) **Preserve the integrity of the working land conservation easements.** 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.

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

EMBRACE MATCH ALTERNATIVES

- 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. 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.

Requiring cooperating entities to provide a cash match for easement projects can prevent important conservation in rural regions of the country that do not have state or local government funding for conservation and may result in missing strategically important conservation opportunities.

- 2) **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 several 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, and has set back what was a productive partnership between NRCS and DoD.

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 but we want to ensure that the Farm Bill pays close attention to the following issues:

- 1) **Streamline the landowner application processes.** NRCS now requires 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 is 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.** 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.

ALLOW ELIGIBLE ENTITIES TO HOLD FOREST LEGACY EASEMENTS, SUBJECT TO THE APPROVAL OF THE STATE PROGRAM

- 1) Some landowners are hesitant to put their lands under conservation easements held by state agencies. Allowing state foresters an option to place easements purchased with Forest Legacy funds with eligible entities, so long as the easements remained consistent with the state Forest Legacy plan, would enable some states to enroll strategically important forest lands they might not be able to protect otherwise.

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. For your information, we have also included our comments regarding conservation programs in the recent Senate draft Farm Bill.

Respectfully yours,



Russ Shay
Director of Public Policy



Lynne Sherrod
Western Policy Manager

attachment

April 24, 2012

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

Dear Chairwoman Stabenow and Ranking Member Roberts:

The Land Trust Alliance wishes to commend you and your staff for the draft farm bill recently posted on the committee's website.

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, many of whom work with NRCS and other USDA agencies to protect working farm, ranch and forest lands across America.

As you know, we have paid special attention to the working land easement programs, including the Farm and Ranch Lands Protection Program (FRPP) and Grassland Reserve Program (GRP), now combined in your draft bill as Agricultural Land Easements under the Agricultural Conservation Easement Program. We want to thank you for the thoughtful way this has been done in the draft, and for the funding levels provided for these easements.

The need and demand for the easement program from farmers, ranchers, forest owners and their conservation partners will continue to grow, and we will continue to advocate for funding adequate to that demand. At the same time, in the context of spending reductions throughout the bill, we greatly appreciate the funding levels you have provided for the Agricultural Land Easement Program.

We also wish to thank you for increasing the spending caps we understand you have agreed to for the Forest Legacy Program and the Community Forest Program, also of great interest to our members.

We look forward to working with you to ensure that the best possible bill moves forward. We have attached more detailed observations about Subtitle H to this letter.

Respectfully yours,



Russell Shay
Director of Public Policy



Lynne Sherrod
Western Policy Manager

Observations related to the Agricultural Conservation Easement Program

1. Overall, the language does a good job of conveying the distinct differences and separation needed between the two legs of the new Agricultural Conservation Easement Program: Agricultural Land Easements (ALE) and Wetland Easements.
2. We are pleased with the proposed administration of this program as well as the defined appraisal process which specifies use of the Uniform Standards of Professional Appraisal Practices.
3. Cost share concerns:
 - a. We believe the waiver authority for grasslands under Section 1265B (2)(C) that allows the Secretary to provide up to 75 percent of the fair market value in the case of grasslands of special environmental significance is a very useful exception to the general policy of limiting the Secretary to providing no more than 50 percent of the fair market value, and will help the new program greatly as we transition from an NRCS acquisition program under GRP to a program relying on third parties to hold easements.
 - b. We would like to see increased flexibility in the approach to the 50 percent match required for other ALE projects, including farm and ranch land easements, to allow the Secretary to recognize eligible entity expenditures and landowner donations in cases where they will advance strategically important conservation.
 - c. We regret that the committee has not chosen to restore the ability of the US Department of Defense to provide matching funds for ALE projects, which they did with FRPP projects until that was quite inadvertently halted by language changes in the 2008 Farm Bill. We believe that partnership was a very valuable one for conservation.
4. We thought the intent of the cost-share language for ALE easements is to replicate the requirements currently in place. Some of our partners questioned whether the language succeeds in doing that, and we will want to carefully work through this language with you to make sure it does. It appears that the new language **actually requires a higher cash match** for those cases where there is already a significant landowner donation of value.
5. Thank you for continuing to recognize the importance of allowing eligible entities to use their own templates for easements that are consistent with the purposes of the program and provide effective enforcement of the conservation values.
6. We understand and agree that the federal investment in easements must be protected by a right of enforcement, but believe that the changes in the 2008 Farm Bill better

addressed this issue through the provision of a contingent right of enforcement to the Secretary. This comes down to a very important question of who has the primary responsibility for enforcement of an easement, and that must belong to the eligible entity.

7. It is also understandable that there is provision for the treatment of any potential violation [Section 1265B (b)(4)(E)]. However, this is drafted in a way that could provide for draconian penalties far beyond the cost of correcting any harm, with no clear assurance that the eligible entity would be allowed a reasonable opportunity to resolve any concern before an agreement would either be terminated or a refund requested.

Other Conservation Issues

1. Thank you for introducing expanded compatible uses to the Wetland Easements as well as decreasing the ownership requirement from 7 years to 24 months. The 7 year requirement has been a barrier to important wetland conservation, and ignored circumstances including bankruptcies and other unforeseen ownership changes.
2. Thank you for the reported increases in the funding caps for the Forest Legacy and Community Forest Programs, which are of great interest to many of our members.