



Land Trust Proposals for the 2012 Farm Bill
Partnerships for Highly Leveraged Conservation of Working Lands

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The Land Trust Alliance promotes voluntary private land conservation to benefit communities and natural systems. We are the national convener, strategist and representative of more than 1,700 land trusts across America. The Alliance has worked to maximize funding for the purchase of conservation easements in the Farm Bill, and to increase land trusts' ability to partner with NRCS to deliver these and other federal conservation programs to landowners.

Investing more than four billion dollars a year in a suite of conservation programs, the Farm Bill is the largest source of federal conservation funding. Easement programs like the Farm and Ranch Lands Protection Program (FRPP) and Grassland Reserve Program (GRP), administered by the Natural Resource Conservation Service (NRCS), are conserving hundreds of thousands of acres of environmentally and economically important landscapes across America. While there are other highly important conservation programs under the Farm Bill, these are the two most often identified by Alliance members as critical sources of funding for their conservation work.

Below are the priorities for the Farm Bill that the Alliance, working with its members, has identified.

MAXIMIZE FUNDING FOR PERPETUAL WORKING LANDS EASEMENTS

Securing funding for perpetual easements to protect working farms, ranches and forests is the Alliance's top priority for the 2012 Farm Bill.

In the 2008 Farm Bill, Congress approved \$1 billion over five years for FRPP and GRP. Going into 2012, **all of this funding is at risk**, due to the perilous federal budget situation and competition for limited funds with other major Farm Bill programs, such as nutrition and crop insurance.

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. We understand the very real need for budget constraints and the desire by lawmakers to control federal spending. However, conservation dollars leveraged through local partners 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, and protect the economic viability and quality of life of many rural communities.

EMBRACE MATCH ALTERNATIVES

Requiring cooperating entities to provide a cash match discriminates against regions of the country that do not have state or local government funding for conservation.

- a. **Don't limit landowner generosity – give landowners the option of donating easement value to fulfill the entire 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 a 50% match requirement, but believe that allowing it to be satisfied through the broadest possible match requirements affords NRCS the ability to better strategically target critically important productive lands.
- b. **Harmonize the GRP match requirements with FRPP to encourage the holding of easements by cooperating entities, reducing upfront and long-term costs to the federal treasury.** It would be far more cost-effective to achieve program goals through easements held by cooperating entities (like land trusts), for which USDA pays no more than 50% of the easement value and for which the cooperating entity takes responsibility for monitoring and stewardship of the easement.
- c. **Restore 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. When the 2008 Farm Bill essentially 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.
- d. **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. Such credits help to leverage the federal investment in FRPP and GRP easements and represent 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 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:

- a) **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. We hope the Farm Bill and the agencies will consider ways to simplify these requirements, which can be difficult to comply with, particularly for landowners without reliable Internet access and when NRCS and FSA are not set up to effectively help landowners complete the application.
- b) **Streamline appraisal practices.** Appraisal reviews are essential to preventing 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 resolve this problem. Improving this area is key to shortening the time needed to close FRPP transactions.

- c) **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.
- d) **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 key to a successful bill.
- e) **Allow reimbursement of transaction costs incurred by cooperating entities where it will enable 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.
- f) **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) and Healthy Forests Reserve Program (HFRP) 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, the conservation community was asked to consider the consolidation of conservation programs in the 2012 Farm Bill. The following principles will guide our consideration of consolidation proposals:

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

- b. Promote the cost-effective and politically attractive model of having nonprofits and local governments hold and monitor conservation easements on working lands;
- c. 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;
- d. Use a single, simple, appraisal system for all working land perpetual easements based on determining the fair market value of an easement through an appraisal consistent with the Uniform Standards for Professional Appraisal Practice (USPAP);
- e. 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);
- f. Consolidation should be aimed at making conservation more available to landowners, and not toward reducing funding.

GIVE FARMERS AND RANCHERS NEW OPTIONS UNDER CRP

Restructure the Conservation Reserve Program (CRP) to allow farmers and ranchers the option to choose permanent land conservation. The CRP primarily works by purchasing 10 year contracts to retire lands from tilled agriculture. It is the single largest conservation program in the country, spending nearly \$1.8 billion a year and currently holding contracts on 31 million acres of formerly tilled land. Its purposes are to reduce erosion by retiring highly erodible lands and to create valuable wildlife habitat.

High grain prices (encouraging farmers to put CRP land back into grain production), will cause the acres enrolled in CRP to shrink over the next few years. Additionally, there is great fiscal pressure to reduce the overall size and cost of the program.

Adding the option of perpetual easements on appropriately targeted lands will, over the long term, both advance the conservation purposes of CRP and reduce its cost. We believe that it makes sense that these are working-land easements, like those for GRP, which allow grazing uses with appropriate safeguards for highly erodible soils and sensitive wildlife. Unfortunately, much of that long-term cost benefits of such an approach lie outside the budget window of the Farm Bill. We will urge the Congress to use common sense to go beyond the budget rules and allow long-term investments that will, in the end, reduce the cost of keeping highly erodible soils from being tilled and of maintaining grassland habitat essential for healthy wildlife populations. We are committed to working with a broad set of stakeholders to explore potential redesigns that would be good for conservation, good for farmers and ranchers, more efficient, and politically realistic.

BACKGROUND INFORMATION

Overview of the Farm and Ranch Lands Protection Program (FRPP)

FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. The U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) administers the program.

From 1996 through 2010, FRPP has enrolled over 800,000 acres in cooperation with more than 400 entities in 44 states. These statistics attest to the success of this program with landowners and with cooperating entities and exemplify its track record of effective work against the loss of productive agricultural lands nationwide.

The Alliance collaborated with other conservation interests (including the National Cattlemen's Beef Association) to improve the usefulness and acceptance of this program by landowners and land trusts in the 2008 Farm Bill. That bill included (a) a newly defined role of the federal government (NRCS), which is to provide funding for conservation easements, rather than to acquire a federal interest in land; (b) changes to the valuation procedures to more closely parallel standards required by IRS; and (c) broader land eligibility criteria.

These noteworthy changes, coupled with an increased funding level of \$743 million for the FY 2008 to FY 2012 (compared to \$499 million for the previous six fiscal years), will lead to the protection of significantly more working landscapes, if funding levels stay intact.

One of a handful of organizations that has made FRPP their top priority in the coming Farm Bill, the Alliance brings to the table land trusts across the country experienced with this program and helps build them into an empowered network of local advocates. At a time when state programs are facing their own fiscal problems, the advocacy of local land trusts will be more important than ever.

Overview of the Grassland Reserve Program (GRP)

GRP was established with the passage of the 2002 Farm Bill. The initial concept, first promoted by the National Cattlemen's Beef Association and The Nature Conservancy, was to designate USDA conservation monies for the purchase of perpetual conservation easements on working grasslands. Agricultural land trusts found there were many farm and ranch owners desiring to sell their development rights, but there were insufficient public or private funds to meet this demand. While FRPP was an alternative for some landowners, funds from this program tended to focus on states that provided matching funds for the purchase of conservation easements on smaller tracts of tilled land. Moreover, FRPP guidelines and scoring criteria were not a good fit for grasslands utilized by the ranching community.

The 2002 Farm Bill enacted the first GRP by giving NRCS authority to enroll up to 2 million acres during the 2003 to 2007 fiscal years, with funding capped at \$254 million. The legislation contained several provisions not envisioned in the original proposal. These provisions included (a) an option for 10, 15, 20, or 30 year "rental agreements" and 30-year easements; (b) authority to use GRP funds for restoration of rangeland; (c) a requirement that GRP easements have an NRCS-approved conservation plan; (d) a

requirement that GRP land could not be hayed during nesting season for ground-nesting birds as designated by NRCS; (e) unusual parameters for determining the valuation of GRP easements; and (f) unclear direction to NRCS for allowing qualified conservation organizations to hold, own, and administer GRP easements. In addition, the original GRP conservation easement template was patterned after the Wetlands Reserve Program and contained several provisions unacceptable to most landowners.

The Alliance and the Partnership of Rangeland Trusts were successful in working with NRCS officials to modify and improve the GRP easement template. With the additional help of The Nature Conservancy, this coalition was instrumental in convincing Congress to amend the GRP statute in 2008 and clarified that GRP contract holders/landowners could transfer title of GRP easements to third party entities (land trusts).

The first application period for GRP was held during the summer of 2003. State NRCS offices were flooded with applications and the pool of funds for GRP was exhausted after three years of applications. In 2007, NRCS officials reported a backlog of 7,500 GRP applications, on over 5 million acres. As of April 2011 there were over 225,000 acres of perpetual easements enrolled in GRP.

The final 2008 Farm Bill reauthorized GRP, with authority for NRCS to enroll an additional 1.22 million acres during the 2009 to 2012 fiscal years. That translated to approximately \$299 million (keep in mind that 40% of this funding must be used for 10, 15 & 20 year rental contracts). The most significant enhancement supported by the Alliance and its partners was language allowing eligible nongovernment organizations (land trusts) an opportunity to enter into cooperative agreements with NRCS to hold GRP easements.

The processes for cooperating entities to use GRP funds are still relatively untested because so few have actually gone through the process, and because NRCS pays full value plus transaction costs for easements they hold, but only 50% of transaction costs for easements held by third parties.

There is a critical need to establish a baseline in the 2012 Farm Bill. As it stands, there is no financial placeholder for this vitally important tool for the conservation of the nation's grassland resources, at a time when high grain prices have put productive grassland habitats at more risk than ever before.