

# Maximizing the Economic and Environmental Benefits of ACEP-ALE

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This document, focusing on USDA's ACEP-ALE program, is one in a five-part series of transition recommendations from [AFT](#) to the Biden Administration. The full set of recommendations can be [found here](#). Please note that these recommendations are not intended to represent the full breadth of policies supported by AFT. Rather, they were chosen because they could be swiftly implemented without congressional action. AFT recognizes that there are many other challenges facing agriculture and we look forward to working with the Biden Administration, Congress, and other stakeholders to achieve lasting solutions.

## SUMMARY

The land vital to our country's food security, rural economy, and climate goals continues to be lost at an alarming rate. In just the 15-year period from 2001-2016, 11 million acres of agricultural land (equivalent to all US farmland devoted to fruit, nut, and vegetable production in 2017) were paved over or converted to uses that threaten the future of agriculture.<sup>1</sup> The *Agricultural Conservation Easements Program-Agricultural Land Easements (ACEP-ALE)*, the one federal program dedicated to protecting agricultural land, will require significant additional resources to meet current need and demand. The Biden Administration could use ACEP-ALE not just to protect additional agricultural land, but also to increase conservation, enable reinvestment in farm operations, and create opportunity for a new generation.

## BACKGROUND

The *Agricultural Conservation Easement Program (ACEP)* is divided into two subprograms. The *ACEP - Wetlands Reserve Easements (WRE)* component funds wetlands protection and restoration. The *ACEP - Agricultural Land Easements (ALE)* component funds the purchase of perpetual easements that limit the non-agricultural use of agricultural land.

ACEP-ALE provides matching funds to eligible entities to buy conservation easements on eligible farmland and ranchland. The purpose of the program is to:

... protect the agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land that negatively affect the agricultural uses and conservation values; and protect grazing uses and related conservation values by restoring or conserving eligible land (16 U.S.C. § 3865).

In general, NRCS may pay up to 50% of the appraised fair market value of the easement through ACEP-ALE. However, a waiver is available to increase the cost-share for grasslands of special environmental significance. Landowners who participate in the program are subject to

the Farm Bill's adjusted gross income (AGI) requirement. A conservation plan is required for highly erodible land protected through the program.

Because of its 50% non-federal match requirement, ACEP-ALE leverages significant state, local, and landowner contributions toward the permanent protection of farmland and ranchland. Even with this required match, demand for the program has consistently outpaced available funding. The program is popular because the sale of an agricultural conservation easement serves not just to protect land, but also enables a farmer, rancher, or landowner to reinvest in their operation, reduce debt, fund retirement, or transfer the land to the next generation of producers. As many producers and landowners face economic uncertainty, the sale of an easement offers those who want to remain in agriculture, or want their land to remain in agriculture, a viable alternative to selling the land for development.

A 2013 survey of participants in the federal predecessor to ACEP-ALE, the Farm and Ranch Land Protection Program, helps to demonstrate how the proceeds from easement sales are used. It found that 84% of landowners who sold easements invested some of the sale proceeds back into their operation. Nearly half of the survey participants used the money to construct, expand, or repair agricultural buildings. 55% repaid loans on agricultural land they already owned or bought additional land. Participants were also motivated to implement conservation practices – 67% reported having a written conservation plan, and 75% reported the application of at least one conservation practice on their land, with many participants applying multiple practices.<sup>2</sup>

Since 1996, ACEP-ALE and its two predecessor programs<sup>i</sup> have protected 1.7 million acres of agricultural land.<sup>3</sup> In the 2018 Farm Bill, Congress recognized the importance of ACEP and increased its annual funding to \$450 million. Even with the increase, this level of funding will fall far short of protecting as much land as is being converted annually. While an average of 730,000 acres of farmland were converted from agriculture annually between 2001-2016, in FY 2019, the first year of funding under the 2018 Farm Bill, ACEP-ALE enrolled 304,000 acres.<sup>4</sup> AFT estimates that protection of 50% of the nation's nationally significant land, as identified in its 2020 *Farms Under Threat: The State of the States* report, would cost \$533 billion in total.<sup>ii</sup> Spreading this cost over a horizon of 20 years, the annual cost (excluding inflation) would be \$27.6 billion. Yet in FY 2019, final obligations for ACEP-ALE easement purchases were just \$119 million out of the \$450 million authorized to be split between ACEP-ALE and ACEP-WRE.

As it develops pandemic recovery proposals for congressional consideration, AFT urges the Biden Administration to consider a special funding increase for ACEP to provide additional stimulus to the agricultural economy. To complement this increase, AFT believes enhancements could be made to the program to shorten the timeframe for project completion and provide more guidance to cooperating entities. Furthermore, to drive conservation and carbon sequestration

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<sup>i</sup> ACEP-ALE's predecessor programs are the Farmland Protection Program and the Farm and Ranch Land Protection Program.

<sup>ii</sup> Based upon an average easement value of \$3,200 per acre and 346 million acres in total of Nationally Significant agricultural land.

on land where the investment will be most secure, land protected through ACEP should be prioritized for NRCS conservation programs and technical assistance.

## RECOMMENDATIONS

*1. Consider including a one-time investment of \$1.5 billion in ACEP as part of the Biden Administration's pandemic relief and recovery proposal to Congress.*

As the Biden Administration looks for opportunities to spur economic recovery following the COVID-19 pandemic, ACEP can play an invaluable dual role in supporting the agricultural economy while protecting agricultural land at a time when it is especially vulnerable to conversion. The sale of an agricultural conservation easement would give landowners an alternative to selling some or all of their land in order to weather current economic challenges, reduce debt, and/or expand their operation. At a time when economic conditions are causing many older producers to exit the agricultural industry, the sale of an easement could enable a farm or ranch family to finance retirement and ensure that the land that represents their legacy is protected forever for farming. Even a special increase of \$1.5 billion is unlikely to meet overall program demand.

*2. Prioritize ACEP-ALE participants for conservation technical assistance and for participation in other USDA conservation programs such as EQIP, CSP, and RCPP.*

Land protected through the ACEP-ALE program will remain available for production, carbon sequestration, and other ecosystem services in perpetuity. As such, this land should be prioritized for conservation planning and for participation in EQIP, CSP, and RCPP. This same prioritization should also apply to agricultural land that has been permanently protected through federal predecessor programs 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.<sup>5</sup>

*3. Increase overall NRCS staffing and use the hiring process to provide additional expertise on easement programs.*

While NRCS was able to increase hiring in FY 2020, the agency remains well below the 11,000 staff members recommended by its own analysis of need.<sup>6</sup> This can lead to delays in providing on-the-ground support, including addressing questions related to ACEP-ALE. As NRCS increases its workforce, AFT recommends that this process include the hire of additional staff to specifically support easement efforts.

*4. Pursue program efficiencies to speed the time from application to close by (1) allowing AGI determinations to be made by the Farm Service Agency (FSA), rather than requiring certification directly by the IRS, (2) allowing applications to proceed through the process while AGI determinations are pending, and (3) allowing continuous program sign-ups.*

AGI determinations have been a chronic sticking point for the ACEP program, causing delay in project approvals and funding. In FY 2020, NRCS instituted a workaround for AGI determinations, allowing producers to be verified through FSA without waiting for a direct determination by the IRS. This workaround should remain in place at least through the pandemic. NRCS should also explore the possibility of an approach similar to that used by the Department of Education for Free Application for Federal Student Aid (FAFSA) applications: through a form, a landowner could request release of specific information from the IRS to FSA, and FSA would be empowered to use the information provided by the IRS to verify compliance. Under either approach, NRCS should direct state offices to allow applications to proceed while AGI determinations are pending, provided that the determinations are completed by the time of project close.

Continuous sign-up periods would also speed the application process. While authorized under current law, most states batch their ACEP applications rather than allowing for continuous sign-ups. A continuous sign-up process could allow high-scoring projects to move ahead, enabling entities and landowners to begin the process of assembling the necessary information and distributing the application process workload more evenly across the fiscal year.

***5. Develop and share additional program information on unmet demand, demographics, and other data.***

AFT commends NRCS for its continued upgrades to, and integration between, software systems that will enable entities to track applications through the process. These systems will also enable NRCS to better evaluate unmet program demand. With this improved capacity, NRCS should develop and share additional data with stakeholders on the number of unfunded applications by state, and by ACEP subprogram. NRCS should also track demographic information that would enhance understanding of program participation, such as gender, age, and race.

***6. Prioritize and provide clear guidance to practitioners on acceptable transaction models for Buy-Protect-Sell, and do not require additional justifications for its use.***

The 2018 Farm Bill included new statutory authority within ACEP to allow *Buy-Protect-Sell (BPS)* projects. This authority enables an eligible entity – such as a land trust – to serve as an interim landowner, allowing them to *buy* land that comes on the market, *protect* the land through ACEP-ALE, and then *sell* the protected land to a farmer or rancher. This intermediary role helps prevent land from being sold for uses other than agriculture and enables producers – often young or beginning – to purchase protected land that they might not otherwise be able to afford. Land trusts currently engaged in BPS transactions all focus their programs on helping a new generation of producers gain access to land.

The ACEP Interim Rule noted several potential avenues for BPS transactions but provided little guidance on which avenues would be considered legally permissible. This has left entities to propose projects to NRCS which may or may not be accepted, chilling interest in pursuing BPS projects. AFT urges the Biden Administration to provide more detailed guidance on

acceptable models for BPS transactions. AFT would welcome the opportunity to serve as a resource for the new Administration in developing that guidance.

[American Farmland Trust](#) is the only national organization that takes a holistic approach to agriculture, focusing on the land itself, the agricultural practices used on that land, and the farmers and ranchers who do the work. We look forward to serving as a resource to the Biden Administration. For more information about these and other recommendations, contact AFT Policy Director Tim Fink at [tfink@farmland.org](mailto:tfink@farmland.org).

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<sup>1</sup> J. Freedgood, M. Hunter, J. Dempsey, A. Sorensen, “Farms Under Threat: The State of the States.” American Farmland Trust, 2020. <https://farmlandinfo.org/publications/farms-under-threat-the-state-of-the-states/>

<sup>2</sup> J. Esseks, B. Schilling, and A. Hahn, “Impacts of the Federal Farm and Ranch Lands Protection Program: An Assessment Based on Interviews with Participating Landowners.” American Farmland Trust and Center for Great Plains Studies, 2013. <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1002&context=greatplainsfellows>

<sup>3</sup> Data from Farmland Information Center.

<sup>4</sup> USDA NRCS, “NRCS Conservation Programs, Agricultural Conservation Easement Program.” [https://www.nrcs.usda.gov/Internet/NRCS\\_RCA/reports/srpt\\_cp\\_acep.html](https://www.nrcs.usda.gov/Internet/NRCS_RCA/reports/srpt_cp_acep.html)

<sup>5</sup> J. Esseks et al. “Impacts of the Federal Farm and Ranch Lands Protection Program.”

<sup>6</sup> House Ag Democrats, “Challenges and Successes of Conservation Programs in 2020.” October 1, 2020. Youtube video, 1:54:12. <https://youtu.be/lnCS-OrQdGQ>