December 21, 2022

Submitted Via Federal eRulemaking Portal (http://www.regulations.gov)

Natural Resources Conservation Service
U.S. Department of Agriculture

Re: Document Citation: 87 FR 70770
Docket Number: NRCS-2022-0015
Document Number: 2022-25292
Federal Register: Monday, November 21, 2022; Vol. 87, No. 223; Page 70770-70772

Request for Public Input About Implementation of the Inflation Reduction Act Funding

Dear Chief Cosby:

The below organizations and agencies—all engaged in the permanent protection of farmland and ranchland— applaud the inclusion of nearly $20 billion for agricultural conservation in the Inflation Reduction Act (IRA), including $1.4 billion for the Agricultural Conservation Easement Program (ACEP). This historic funding, invested wisely, will provide many more producers the tools they need to protect their land, increase resilience to extreme weather, sequester carbon, and reduce emissions—all while improving their profitability.

Congress recognized the powerful role that agriculture can play in mitigating climate change. In including the Agricultural Conservation Easement Program in the IRA, Congress explicitly recognized this fundamental truth: None of the IRA's historic investments in climate-smart agricultural practices will be realized if we lose the agricultural land on which these practices rely.

The conversion of agricultural land to inefficient development remains one of the greatest threats to American agriculture and puts further strains on the climate. According to American Farmland Trust's (AFT) *Farms Under Threat* research, supported in part by USDA's Natural Resources Conservation Service (NRCS), 11 million acres of agricultural land were converted or compromised by non-agricultural development between 2001 and 2016—a recessionary period in the U.S. economy. Using this time period to model predicted agricultural land conversion out to 2040 (a time period with slower rates of conversion than in the 1980s and 1990s), *Farms Under Threat 2040* estimates that an additional 18-24 million acres of farmland and ranchland will be converted within the next two decades—more than one million acres annually. This is land that, if converted to developed uses, will not only be unavailable forever for food production and carbon sequestration, but will further *increase* GHG emissions.

The Agricultural Conservation Easement Program—and, specifically, the Agricultural Land Easements (ALE) subprogram within ACEP—is the most important tool in NRCS' climate mitigation toolbox. Consider the following:

- Protecting Agricultural Land Reduces Conversion to Developed Uses with Higher GHG Emissions
    - AFT's Greener Fields reports done in California and New York found that an acre of farmland, no matter what the crop grown, produces far fewer GHG emissions than an acre of developed land, especially the type of low-density residential development that is the lead cause of farmland conversion across the country. In California, on average, urban areas emit 58 times more GHG per acre than the state's farmland; in NY, the emissions rate is 66 times more.
    - AFT's California analysis found that reducing farmland loss in the state by 700,000 acres would reduce GHG emissions the equivalent of taking 1.9 million cars off the road each year.
    - The California Sustainable Agricultural Lands Conservation (SALC) Program is part of California Climate Investments (CCI), a statewide program that puts billions of cap-and-trade dollars to work reducing greenhouse gas emissions, strengthening the economy, and improving public health and the environment. In FY20, the state invested $52 million to permanently protect 16,853 acres of irrigated farmland, rangeland, and mixed-use agriculture; the state estimates that this investment will help limit sprawl and prevent the release of an estimated 4,661,913 metric tons of carbon dioxide equivalent.[i]
    - Using the same quantification method as used for the California SALC program (California Air Resources Board's 2020 Agricultural Conservation Easement Quantification Method), AFT did a recent analysis of a 103-acre Midwest farm slated for protection through the Regional Conservation Partnership Program (RCPP). AFT found that protecting the farm could avoid an estimated 19,541 metric tons of carbon dioxide equivalent emissions in the first 30 years. Of the avoided emissions, 40% would be from reduced electricity consumption, 38% from reducing driving, and 20% from avoided soil carbon loss. In addition, 8 tons of criteria air pollutants could be avoided.

- Protecting Productive Agricultural Land Reduces Conversion of Grasslands to Cropland and Reliance on More Marginal Agricultural Land for Crop Production
    - The most commonly used land eligibility pathway for ACEP-ALE requires that at least 50% of the land under easement consist of prime, statewide important or unique soils.[ii] This emphasis on productive agricultural land protects land that, by virtue of being relatively flat, cleared, and well-drained, is often most at risk of development. According to AFT's Farms Under Threat 2040 modeling, about 9 million acres of the country's most productive, versatile and resilient land is projected for conversion by 2040. Development of this land is especially damaging to the environment and climate, as it shifts production to more marginal farm ground and to land that may currently be in grassland or pasture. This results in higher input costs for agricultural producers and increases the likelihood of soil erosion, water quality challenges, soil carbon loss, and loss of land with high conservation values.[iii]

- Conservation Practice Adoption is Higher on Permanently Protected Agricultural Land
    - In cooperation with AFT and NRCS, Purdue University researchers recently surveyed owners and operators of working land that had been protected in part through the former Farm and Ranch Land Protection program (FRPP). A similar study was conducted in 2013.[iv]
    - Preliminary findings from the Purdue survey show that, since protecting their land through FRPP, landowners implemented a range of conservation practices: 65% initiated conservation tillage, 57% implemented cover crops or green manure crops, 62% implemented nutrient management, and 61% installed buffers along streams. In comparison, USDA's 2017 Census of Agriculture asked producers about selected land use practices, including tillage practices and cover crops. Just 33.6% of farms with cropland reported using no-till or reduced tillage and 10.4% reported planting cover crops.
    - The fact that agricultural land is protected is a motivating factor for owners and operators with respect to conservation practice adoption. When survey respondents were asked to rate the importance of different aspects of FRPP participation to implementation of conservation practices, "the protected status of the land" was selected by the highest percentage of respondents as being very or extremely important.

- Farms and ranches with agricultural land under an agricultural conservation easement typically have significant acreage in grassland, wetlands, and forest cover, providing valuable carbon sequestration.
    - Agricultural land enrolled through ACEP-ALE can include grasslands, wetlands and forest land. Up to 66% of the land under an ALE-funded easement can be forested—even more if the easement includes an active sugarbush. While data on acreage of land in each land type is not publicly available for ACEP-ALE, preliminary data from the Purdue survey of FRPP landowners show that, among survey respondents, 39% of land under FRPP easement is cropland, 11% is woodland, 39% is rangeland or pasture, and 11% is in farmstead areas.
    - Producers who are struggling financially have few options to liquidate their assets, which can lead to the decision to sell a portion of their land for development. Selling an easement financially supports the entire farm operation, which helps producers keep all of their land in agricultural use, including any land that is not yet protected by easement but still has value for carbon sequestration and conservation.

- Permanently protected agricultural land is farm ground available in perpetuity for conservation practice investments. Federal investments in climate-smart agricultural practices will be lost if the land on which those practices are employed is converted out of agriculture.
    - The IRA represents a nearly $20 billion investment in climate-mitigating conservation practices, including $1.4 billion through ACEP. The ACEP funding is the *only* climate investment that provides *perpetual benefits.* Land protected through ACEP, as well as other permanently protected agricultural land, is land on which additional investments in climate-smart conservation practices are

likely to have the greatest return on investment, as this land will forever be available for agricultural use.

In addition to its climate benefits. ACEP-ALE provides vital economic benefits to producers, landowners and rural communities, and wealth-building opportunities for young and historically underserved producers for whom protected land is often the only affordable option for purchase.

- Proceeds from the sale of an easement can fund retirement, pay down debt, or allow for investment in the farm or ranch, including purchase of additional land and adoption or expansion of conservation practices. Participation in ALE generally reduces the value of the land, facilitating intrafamily farm transfers and making land protected through ALE often the only land affordable to purchase to a young, beginning or historically underserved producer.

- ACEP-ALE's economic benefits and return on investment have been well documented.
  - A 2022 analysis of ALE investments done by the Montana Association of Land Trusts found that between 2014 and 2021, every federal ALE dollar invested yielded $1.89 of economic activity.[v] All told, this $109 million investment:
    - Produced a total economic impact of $182 million
    - Supported 1,057 local jobs and $41.5 million in labor income
    - Contributed $99 million to the state's GDP.
  - A 2018 analysis done by Colorado State University showed a similar high return on investment.[vi] Between 2009-2017, almost $80 million in ALE payments to Colorado producers:
    - Generated $2.19 of economic activity for every federal dollar invested due to direct, indirect, and induced spending in the state
    - Leveraged $2 in local, state and private funding for every federal dollar invested
    - Provided economic support to rural communities. 82% of direct ALE expenditures went to landowners in rural counties.

The increased investments in ACEP through the IRA offer a historic opportunity to catalyze additional agricultural land protection across the country and expand on the multifunctional benefits of the program. This opportunity cannot be realized, however, without significant administrative changes in ACEP-ALE to address delays and inefficiencies in the program.

- ALE projects are being lost, and landowner confidence in both the program and partners is being eroded because of unnecessary closing delays. NRCS data shows that ACEP-ALE projects on average take 22.8 months to complete.[vii] In comparison, state-funded agricultural conservation easements in Delaware generally take 6 to 12 months to close.
- The ALE certification process is underutilized and not providing the efficiency envisioned by the statute. Only seven entities have been certified since 2014.

The undersigned organizations make the following recommendations for implementation of ACEP-ALE through the Inflation Reduction Act:

1. **Recognize that, for the reasons stated above, ALE projects that protect agricultural land in perpetuity mitigate and address climate change. Parcel-based prioritization is not necessary and, by adding new administrative requirements to the program, will cause further delays and have a chilling effect on program participation.**
    - NRCS could choose a broad interpretation of the IRA's statutory requirements and quantify the collective benefits of ALE projects completed in a single year. This could be done by tracking on a national basis the types of land enrolled through ALE and quantifying the specific benefits from each land type (i.e., wetlands, grasslands, permanent pasture, forestlands) included in ALE easements). It could also be accomplished by mapping the location of ALE projects using AFT's *Farms Under Threat 2040* spatial modeling or other data sources to determine likely conversion risk and benefits associated with avoided conversion.
    - Alternatively, NRCS could provide an opportunity for entities to include in their project applications a narrative about the climate benefits of the land proposed for protection.

2. **If NRCS determines that parcel-based prioritization is required, it should do so in a way that does not add additional administrative burdens or delays to the program.**
    - Should NRCS interpret the IRA statutory language to require a parcel-level comparison among ALE projects, it should:
        i. Use existing program ranking criteria to prioritize parcels. There is ample flexibility in the current National Ranking Template and state-specific ranking pools to prioritize projects that avoid or reduce GHG emissions or sequester carbon. So as not to create additional new requirements that will slow deployment of program dollars, a separate application process and new ranking criteria should be avoided.
        ii. Any adjustments to the ranking criteria should be made at the state level, recognizing that climate attributes of projects will vary by region, land type, production systems, and data available at the state and local level.
        iii. Some states currently call out and weigh specific climate benefits as part of a "multifunctional benefits" ranking criteria; however, not all states do. State Conservationists and State Technical Committees should be required to examine their existing ranking criteria and identify and weigh criteria components that they consider climate beneficial. These might include criteria related to—
            1. Mitigation or avoidance of GHG emissions, such as reduction in permitted house lots as a consequence of the easement, and/or current or past conservation practices being implemented on the project parcel (evidenced by a current or past NRCS cost-share assistance contract, landowner participation in a state

conservation program, state conservation requirements applicable to the project parcel, or landowner self-certification of specific practices in use), and

2. Carbon sequestration, such as acres of land by type in project parcel (i.e., grassland or permanent pasture, wetland, forest land) or other parcel attributes (e.g., acres in riparian buffers).

iv. Through the state ranking pools, projects with higher overall scores could be funded through state ACEP-Inflation Reduction Act (ACEP-IRA) allocations, provided the climate-based criteria represent a certain percent of the total score. Lower-scoring projects could continue to be funded through the traditional ACEP-Farm Bill (ACEP-FB) allocations. Alternatively, states could rank projects separately: For state ACEP-IRA allocations, projects could be ranked solely on the basis of the climate-specific criteria scores, with state ACEP-FB allocations continuing to fund highest ranking projects overall.

v. If NRCS chooses to prioritize parcels for ACEP-IRA funding based on specific climate-related attributes, it should nevertheless fund all easement projects for which there is ACEP-IRA or ACEP-ALE funding available. As discussed above, all easements are beneficial and ensure that land is available to implement additional conservation practices in the future.

3. **Manage ACEP funding provided through both the IRA and the Farm Bill (ACEP-IRA and ACEP-FB) as a portfolio, ensuring that funding flowing from the combined sources is distributed equitably between ALE and WRE and reflects program demand, leverage, and return on investment.**
    - In FY22, mandatory spending on ACEP through the 2018 Farm Bill was authorized at $450 million. Yet to date, ALE yearly financial obligations have never risen above $119 million (in FY19) and have been dropping since; in FY21, the last year for which data is publicly available, financial obligations were $104 million. Several ALE partners have reported that initial state ALE allocations have dropped significantly, some by more than $1 million, for FY23.
    - In any fiscal year for which IRA funds are available, if NRCS chooses to deploy ACEP-IRA dollars primarily toward WRE and ALE grassland projects, then ACEP-FB dollars should be allocated toward ALE to ensure continued funding equity between ALE and WRE. Funding should be applied where there is existing demand.
    - If a parcel comparison approach is used by NRCS, parcels should be ranked within each subprogram (i.e., ALE, WRE), not ranked against projects in different subprograms.

4. **Make administrative changes to ALE and the easement acquisition process under the Regional Conservation Partnership Program (RCPP) to ensure that the IRA investments in these programs can be deployed quickly and effectively. This is essential to improving landowner interest in, and experience with, the program.**

- Reduce project delays and costs by modifying appraisal policies
    i. Allow appraisals to extend for the life of the parcel contract, as is apparently allowed under WRE. Alternatively, allow appraisals to be good for at least two years. Currently, program policy allows some appraisals to never expire if they fall within a specific one-year window related to the contract. This inconsistent policy on appraisals should be revisited.
    ii. Increase the threshold for national-level appraisal review from projects at $1 million valuation to those at $10 million.
    iii. Accept parcel appraisals that have been reviewed and approved by other funding partners, including state PACE programs, state tax credit programs, and philanthropic funders, without need for additional NRCS review.
- Recognize the Expertise of Partners and Reduce Capacity Strain Within NRCS by Expanding and Improving Certification Process
    i. Allow Land Trust Alliance (LTA) accredited entities that apply for certification and meet the statutory minimum ALE-predecessor program transaction requirement to become certified without any additional review. LTA accreditation is a rigorous process of review of entity practices. Requiring NRCS staff to conduct additional review of accredited entities that meet the statutory requirements is inefficient and a waste of agency resources.
    ii. Allow state Purchase of Agricultural Conservation Easement (PACE) programs that apply for certification and meet the statutory minimum ALE predecessor program transaction requirement to become certified without any additional review. State PACE program practices are subject to both state audits and oversight by state legislative bodies; most have statutorily designated advisory committees as well. Requiring further review of these programs that meet the statutory requirements is equally unnecessary.
    iii. Allow LTA accredited entities that do not meet the minimum ACEP-ALE or predecessor program transaction requirement to enter into formal arrangements with a certified entity in order to take advantage of certification flexibility. Under this scenario, issues found during post-closing audits should result in impacts to both the certified "host" organization and the organization that is benefiting from the certified host organization's certified status.
    iv. Remove closing efficiency as an eligibility determinant. Closing efficiency is often impacted by things outside of the control of the entity managing the transaction. Furthermore, conservation easements are perpetual and increasingly complex. There is more value in getting the transaction right than completing the transaction within an arbitrary time period.
    v. Verification from the State Conservationist that the entity seeking certification meets requirements should result in automatic approval by the Regional Conservationist. State Conservationists should be required to provide timely explanation to an entity if a certification application is

not approved, and to make good faith efforts to work with an entity to address issues that precluded certification.

vi. Upon certification, all flexibilities afforded through certification should be extended to any existing ALE funded transactions being managed by the entity under an ALE cooperative agreement. Managing transactions under multiple sets of rules is inefficient.

vii. Prior to closing, certified entities should be required to submit only necessary forms requesting funds and any documentation necessary to facilitate the transfer of funds (e.g., closing assurances letter, wire instructions). A certified entity could be required, as a part of the request for funds, to certify that it has received and reviewed the supporting due diligence and that the final recorded deed of conservation easement will meet ACEP-ALE program requirements.

viii. Certified entities should be allowed to use their own easement terms and conditions and have the flexibility to modify NRCS deed terms to meet local needs (such as with building envelopes and impervious cover) so long as those terms and conditions are consistent with the purposes of the program. If requested by a certified entity, NRCS should expedite review of its proposed easement template for consistency with program purposes, as well, if asked, review of any easement deed that may deviate from its easement template.

ix. Entities certified under ACEP should be recognized as certified for the purpose of easement acquisitions under the Regional Conservation Partnership Program (RCPP). Certified entities under ACEP should be allowed to use their approved conservation easement templates for RCPP. The current lack of a certified entity program for RCPP, and the inability to use approved templates makes the program inflexible and the funding difficult to deploy. Standardization with ACEP would increase enrollment and utilization of RCPP funding.

- Eliminate unnecessary administrative requirements for Buy-Protect-Sell projects (BPS).

i. Allow entities pursuing *Buy-Sell-Protect* (BSP) transactions to include these projects in their current program agreements. Currently, entities with BSP projects are required to negotiate entirely new program agreements for these projects, which is an unnecessary additional burden on both NRCS and the entity. Prior to this administrative change, these projects could be included in an entity's regular program agreement. This prior practice should be restored.

ii. Return to the statutory requirement that the resale of protected land in a BPS project be at no more than agricultural value. The current program requirement that the initial sale to a farmer of land protected through a BPS transaction be at the lower of agricultural value or the original purchase price has had a chilling effect on land trusts interested in pursuing BPS projects and was implemented despite stated concerns expressed by stakeholders.

iii. Allow any otherwise-eligible agricultural land to be eligible for a BPS project. The administratively imposed requirement that land proposed for a BPS transaction be subject to additional conditions - namely, that the land be under imminent threat of conversion - is arbitrary and burdensome for both NRCS and entities. Many BPS transactions are facilitating the transfer of land from willing sellers to landowners to a new, more diverse generation of producers; limiting the program to land under imminent threat of conversion restricts the use of BPS projects as a land access tool that can contribute to the Department's broader goal of advancing equity.

- Improve Project Closing Time by Investing in State ACEP-ALE Coordinators
    i. The cost-shared ACEP-ALE coordinator concept started in Montana several years ago and has expanded to Washington and Texas. The model has resulted in increased coordination between NRCS and eligible entities on document reviews and application tracking. Strategic investments in these types of shared positions, which might include coordination around easements in RCPP projects as well, could greatly improve ACEP-ALE's overall functionality and allow NRCS and its partners to deploy resources more efficiently while maintaining the necessary standards for public accountability
- Require administrative coordination between ACEP-ALE and RCPP projects utilizing entity held easements
    i. Currently, RCPP and ACEP-ALE easements are administered under entirely different regulatory processes. This creates confusion for eligible entities, private conservation funders, and landowners. Coordinated administration will allow for efficient review and contracting, consistency in easement terms (or consideration of appropriate exceptions), and more effective implementation of these important conservation programs. The $4.95 billion in IRA funding directed to RCPP calls for a steep ramp-up of $800 million in new RCPP funding in FY 2024. This presents an unparalleled opportunity for agricultural conservation easements to be prominently featured in RCPP proposals over the next four years, and to explore opportunities for stacked conservation approaches. To effectively utilize these funds, it is imperative that NRCS clarifies and streamlines the easement component of RCPP.
- Address delays in after-closing approvals by modifying policies on easement administrative actions
    i. As more land becomes protected through ALE, the ability to efficiently administer easements is critical to the continued success of acquiring new easements. Frustration among existing ALE landowners and entities around easement administrative actions will chill both landowner and entity interest in program participation in the future.
    ii. NRCS rules and procedures around modifications have unnecessarily constrained entities from being able to properly administer easements over time. NRCS should revise its policy around modifications to:

1. Clarify that modifications can be used to correct violations and avoid costly litigation.
2. Create a system for considering modifications that is (a) consistent with statute; and (b) consistent with the best practices for amending/modifying conservation easements as developed by LTA.
    a. Allow for supplements and corrections that do not make substantive changes to an easement to be approved by the State Conservationist.
    b. Allow modifications regarding rights reserved by the landowner in the easement (such as residential rights) to be approved by the State Conservationist, recognizing that NRCS agreed to allow the activity when acquiring the easement.
3. Institute specific performance standards for agency response times to modification requests.

5. **Prioritize Spending Through the Environmental Quality Incentives Program (EQIP) and Conservation Stewardship Program (CSP) on Permanently Protected Agricultural Land**
    - As aforementioned, federal investments in climate-smart conservation practices--such as cover cropping, conservation tillage and riparian buffers—can be lost when land on which they are employed is converted to development. Accordingly, NRCS should prioritize those investments on permanently protected land. At a minimum, producers and landowners with land enrolled through FRPP and ACEP-ALE should receive priority for EQIP and CSP applications.

Conclusion

In summary, we urge NRCS to recognize the multiple climate, economic, and broader benefits ACEP-ALE provides, and to avoid new programmatic requirements under IRA that will reduce the speed at which program dollars are deployed.

Additionally, the success of ALE depends on landowner perceptions about program efficiency—primarily about the time involved in both project closings and for easement administrative action approvals. Improving program efficiency through the administrative changes above is essential to ensure that ACEP-ALE delivers on the valuable option it offers landowners.

We appreciate your consideration of these recommendations and look forward to engaging with NRCS leadership on implementation of the Inflation Reduction Act and improving ACEP-ALE and RCPP program delivery and efficiency.

Signed,

American Farmland Trust
Big Creek Ranch, LLC (ID)

Black Family Land Trust (NC)
Blue Mountain Land Trust (WA/OR)
California Farmland Trust
Chelan-Douglas Land Trust (WA)
Colorado Cattlemen's Agricultural Land Trust
Columbia Land Trust (OR)
Connecticut Farmland Trust
Delaware Department of Agriculture
Grand Traverse Regional Land Trust (MI)
Heart of the Lakes (MI)
Idaho Coalition of Land Trusts
Iowa Natural Heritage Foundation
Kane County (IL)
Land Trust for Santa Barbara County (CA)
Magic Valley Land Trust (ID)
Maryland Department of Agriculture
Methow Conservancy (WA)
Oregon Agricultural Trust
Oregon Association of Conservation Districts
Ottawa County, MI
Partnership of Rangeland Trusts
Pennsylvania Department of Agriculture
Robert Redford Conservancy for Southern California Sustainability
Santa Clara Valley Open Space Authority (CA)
Southeast Land Trust of New Hampshire
Texas Ag Land Trust
The Montana Land Reliance
The Land Trust for Tennessee
Vermont Housing and Conservation Board
Vermont Land Trust
Washington Association of Land Trusts
Whatcom County Land Trust (WA)

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[i] California Strategic Growth Council, "California Strategic Growth Council Awards $52 Million to Conserve Agricultural Lands, Reduce Emissions." December 2020. https://sgc.ca.gov/news/2020/12-17.html

[ii] This eligibility pathway may include locally important soils if those soils are designated at the local level. See https://farmlandinfo.org/wp-content/uploads/sites/2/2021/01/AFT_FIC_ACEP-ALE-Checklist-LAND-ELIG_I-BPS-Edit.pdf

[iii] T.J. Lark, S.A. Spawn, M. Bougie, et al. "Cropland expansion in the United States produces marginal yields at high costs to wildlife." *Nature Communications*. September 2020. https://doi.org/10.1038/s41467-020-18045-z

[iv] American Farmland Trust, "Impacts of the Federal Farm and Ranch Lands Protection Program: An Assessment Based on Interviews with Participating Landowners." June 2013. https://farmlandinfo.org/publications/impacts-of-the-federal-farm-and-ranch-lands-protection-program-report/

[v] Montana Associate of Land Trusts, "Working for Montana Agriculture." 2022. https://montanalandtrusts.org/wp-content/uploads/2022/04/Working-for-Montana-Agriculture-508.pdf

[vi] A. Seidl, R. Swartzentruber, and R. Hill, "Estimated Economic Impact of Federal Agricultural Conservation Easement Programs (ACEP) on Colorado, 2009-2017." 2018. https://farmlandinfo.org/wp-content/uploads/sites/2/2020/02/csu307173-RuralLandResearch-bk-www.pdf

[vii] USDA, "Easement Program Acquisition Data." https://www.farmers.gov/data/easements/acquisition