

# Agricultural Land Easements Workshop – Rising to the Challenge

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## WORKSHOP SUMMARY AND ACTION ITEMS

THE RUCKELSHAUS INSTITUTE | UNIVERSITY OF WYOMING

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# Agricultural Land Easements Workshop – Rising to the Challenge Workshop Summary and Action Items

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This document is a summary and aggregation of the workshop discussion and specific content is not necessarily endorsed by all participating individuals and organizations. This summary also does not reflect the recommendations or opinions of the Ruckelshaus Institute or IWJV.

# Executive Summary

The University of Wyoming’s Ruckelshaus Institute of Environment and Natural Resources and the Intermountain West Joint Venture hosted the “Agricultural Land Easements Workshop – Rising to the Challenge” in January 2023. The two-day workshop convened land trust staff, funders, NRCS state staff, and other partners with significant experience with the USDA’s NRCS Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE). The participants engaged in facilitated discussions around several topics intended to help improve the pace and scale of ACEP-ALE implementation. During the discussions, participants identified several key action items to improve the implementation of ACEP-ALE. These action items include:



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| <b>CAPACITY</b>                         | <ul style="list-style-type: none"><li>• Working to develop partner positions, that act as liaisons between land trusts and NRCS state offices, to increase NRCS and land trust capacity.</li><li>• Engaging funding partners to financially support partner positions.</li></ul>  |
| <b>INFORMATION SHARING</b>              | <ul style="list-style-type: none"><li>• Collaborating to develop broad support in the agricultural and conservation communities on the importance of conservation easements.</li></ul>  |
| <b>IMPORTANCE OF CERTIFIED ENTITIES</b> | <ul style="list-style-type: none"><li>• Sharing experiences on the impact of the certified entity program in addressing capacity constraints and accelerating time to easement closings.</li><li>• Conducting outreach to adopt regulatory and statutory reforms to allow more land trusts to become certified.</li></ul> |

The workshop addressed other topics and identified additional action items which we further describe in the workshop summary. A key outcome of the workshop was the shared recognition of the importance of frequent communication and close collaboration between NRCS state offices and land trusts to address challenges to increase the impact of ACEP-ALE.

## Background

Conversion of rangelands is rapidly altering western landscapes, and conservation easements (CEs) are a primary tool for maintaining private agricultural lands and their associated conservation values like wildlife habitat and scenic vistas. The U.S. Department of Agriculture's (USDA) Natural Resource Conservation Service's (NRCS) Agricultural Conservation Easement Program-Agricultural Land Easement (ACEP-ALE) is the largest source of federal funding for CEs and is critical to agricultural land conservation across the country.<sup>1</sup> However, the pace of ACEP-ALE implementation is not meeting demand for CEs and is not sufficient for addressing large-scale land conversion. The slower pace of ACEP-ALE implementation results from a mix of land trust policies and processes, statutory requirements, and NRCS rules and policies. The specific reason for slow implementation can vary significantly from one CE project to another. Many landowners are interested in protecting their lands, and western land trusts estimate a backlog of 400,000 acres worth of CEs while the NRCS is currently working through 200 CEs that have been enrolled in ACEP-ALE but not yet closed.<sup>2</sup> Moreover, the slow rate of implementing ACEP-ALE may be an impediment to ensuring that \$1.4 billion dollars recently appropriated to ACEP-ALE from the Inflation Reduction Act (IRA) will have the desired on-the-ground impact.<sup>3</sup>

The University of Wyoming's Ruckelshaus Institute of Environment and Natural Resources and the Intermountain West Joint Venture (IWJV) jointly planned the Agricultural Land Easement Workshop (the workshop) to collaboratively identify specific strategies to increase the pace and scale of ACEP-ALE implementation to meet landowner demand and the challenges facing working agricultural lands. The workshop convened a small, invited group that included western NRCS State Conservationists, other state NRCS staff, land trust leaders, and partners with an interest in the success of ACEP-ALE. Participants were selected based on their direct experience with ACEP-ALE in the West, expertise in a particular area of interest for the workshop, and willingness to work collaboratively within the confines of the group to find workable solutions.

Prior to the workshop, the conveners conducted informal interviews with a number of experts to identify specific actions and strategies within ACEP-ALE, to help guide the conversation. Facilitators sought action items where state NRCS offices and land trusts could make significant impacts without the need for statutory or rulemaking changes. From those preliminary conversations, facilitators identified two primary categories

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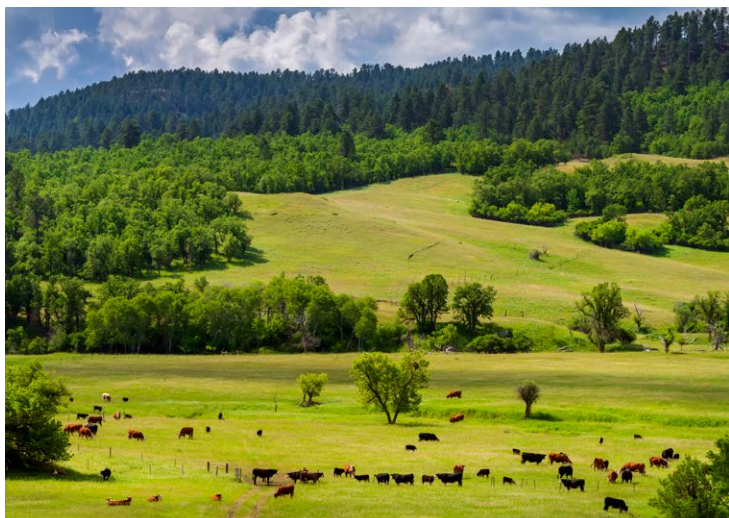
1 *Farm Bill*, Land Trust Alliance, <https://landtrustalliance.org/resources/advocate/issues/farm-bill> (last visited Oct. 12, 2022).

2 Erik Glenn et al., Letter to Chief Terry Cosby, Natural Resources Conservation Service, Sept. 21, 2022; *Easement Program Acquisition Data*, NRCS, <https://www.farmers.gov/data/easements/acquisition> (last visited Sept. 6, 2022).

3 See Jim Monke, Cong. Rsch. Serv., IN119878, *Inflation Reduction Act: Agricultural Conservation and Credit, Renewable Energy, and Forestry* (2022), <https://crsreports.congress.gov/product/pdf/IN/IN11978>.

of improvements—Capacity and Process. Within each improvement category facilitators focused on several specific action items to help guide the conversation. Participants were given a general idea of the topics to be discussed before the workshop, and facilitators asked several participants with expertise to share their insights and experiences on specific topics to prime conversations during the workshop.

The workshop was in the form of a semi-facilitated discussion around specific and actionable improvements and to foster co-learning and collaboration around the implementation of ACEP-ALE. The facilitators opened each topic with a brief background, then experts shared their perspectives on areas of improvement, and conversations flowed relatively organically from those introductory remarks. We highlight the results of those conversations in this summary and intend for these insights to spur tangible actions by land trusts, NRCS state offices, and others, to increase the pace and scale of ACEP-ALE implementation. This document is a summary and aggregation of the workshop discussion and specific content is not necessarily endorsed by all participating individuals and organizations. This summary also does not reflect the recommendations or opinions of the Ruckelshaus Institute or IWJV.



## Summary of Discussion and Lessons Learned

This summary focuses on key takeaways from discussions that led to action items outlined at the end of this report. Throughout the discussion participants made additional key points that are worth mentioning, but do not fit into any of the below categories. These key points helped guide some of the overall conversations:

- There are significant differences for both land trusts and NRCS offices between statutory and implementation bottlenecks. Statutory bottlenecks require changes to the Farm Bill or acts of Congress to address. There are also administrative bottlenecks that require updates to the policy manual to address. Implementation bottlenecks, instead, can be corrected at the state NRCS or land trust levels without the need for time consuming and politically wrought rulemaking or legislative processes. Most of the workshop attempted to focus on implementation bottlenecks although we highlight some statutory bottlenecks that participants identified and felt deserved additional attention.
- Land trusts and State Conservationists need to maintain a relationship of trust and openness. State Conservationists must balance priorities, they cannot know the issues with a program without honest and open dialogue, and land trusts must also work to earn the trust of the State Conservationist.

- Though the speed at which an ALE easement closes is an important consideration, it is not the only consideration and other metrics can be used to measure success. Many of the conversations focused on the speed of closing CEs, which can be a good metric by which to measure success, however, participants also emphasized the ultimate goal of conserving land and the complexities that arise in conservation projects that often require additional time and attention. When considering the pace at which land is being converted in the West, time is still a critical consideration and cannot be disregarded.

“ Partner positions can lead to complete and accurate applications from land trusts and timely and predictable closings from the NRCS. ”

## CAPACITY

During preliminary interviews, participants identified Capacity (specifically in the form of additional staff time for both NRCS offices and land trusts) as a primary area of improvement to ACEP-ALE. As a result of the interviews the facilitators identified three specific topics which could potentially result in actionable steps. Entity certification, discussed in detail in the next section, is also a consideration that impacts Capacity. Facilitators focused the Capacity conversation on the following topics:

1. Partner Positions
2. The Easement Acquisition Branch
3. Directing the focus of the state NRCS office

### Partner Positions

For purposes of our workshop, partner positions include any staff person who works within the NRCS state office, but whose position is partially paid for by another partner. When there is a person who can act as a liaison between land trusts and state NRCS offices, they can open additional and consistent lines of communication. This additional communication between NRCS and land trust staff can create accountability on both sides and lead to greater trust. All of this creates opportunity for improved CE processes and increases the pace and scale of ACEP-ALE implementation.

The Montana Association of Land Trusts (MALT) employs an ALE Program Coordinator who works in the Montana NRCS office and workshop participants generally viewed this position as a success. However, it requires the right person in the job and the right circumstances for long term success. Not every state will see the same degree of success by implementing a partner program. Because State Conservationists have discretion when it comes to accepting partner positions, land trusts and other partners should begin working with State Conservationists early to determine if a partner position is right for their state. Partner positions require significant trust between land trusts and State Conservationists, so the partners should come together before trying to establish a partner position to start developing that trust. Land trusts and State Conservationists need to determine the structure of the position, including the role of the position, how the position is paid for, and what entity houses the position.

The NRCS is often limited in its ability to hire federal staff. Positions employed by partners but working within the NRCS offices help address this limitation as term type positions that fill critical capacity need to take full advantage of fluctuating program resources. Development of partner positions who have easement program skills would build resiliency into the delivery of land protection programs in the long-term.

In addition to the partner position itself, semi-regular meetings between the individuals serving in partner positions, NRCS, and land trusts has led to the further success of the program. The communication between the NRCS and land trusts is key, and the partner position can help facilitate communications and guide those conversations to ensure open and honest dialogue. Partner positions need to be able to effectively communicate the needs of land trusts to the NRCS and of the NRCS to land trusts. This effective communication can lead to land trusts providing advance notice to NRCS offices if a landowner requests an easement modification, something that can result in significant delays.

Participants also learned about the importance of properly structuring the partner position. First, the position should be located in an NRCS office. This will grant them access to resources that are inaccessible outside of the NRCS office. Successful partner positions will likely be seen as an additional NRCS staffer, offering support to other NRCS staff to complete essential project duties. By adding an additional staffer at the state NRCS level, the partner position can improve applications. Since this person will work equally with the land trusts and NRCS, they can help land trusts work toward complete and accurate applications and help the NRCS address any issues that arise in the applications before the problem grows. This will help the NRCS achieve timely and predictable closings. Despite this, the land trust partners who work with the position can greatly inform the big picture focus of the partner position. Second, the position should not be between a single land trust and the NRCS. The position should be between NRCS and a coalition of land trusts, or another partner entity that can serve the needs of the state's land trust community as a whole. If one land trust controls the partner position, it could create a real or perceived conflict of interest and reduce the effectiveness of the position.

Overall, the participants learned that partner positions can offer additional capacity to help increase the pace and scale of ACEP-ALE. However, there are certain considerations which make the partner position more feasible in some situations than in others. Land trusts and state NRCS offices learned more about how they could go about starting a partner position program.

### The Easement Acquisition Branch

The Easement Acquisition Branch (EAB) is a service provided to select states through the NRCS National Headquarters (NHQ). The EAB was initially established to offer due diligence support to NRCS state offices that needed additional easement staff capacity, lacked specialized realty and acquisition support, or processed relatively few easement acquisitions and were unfamiliar with the easement acquisition process. The EAB was never fully funded, so fewer than 15 states currently receive support from the EAB,

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The EAB offers capacity and expertise to NRCS offices that is difficult to maintain in-house.”

although this opportunity may be available for more states that want to participate in the future, if funding levels were to increase.

EAB provides support to select NRCS state offices so that state offices are not required to maintain their own realty specialist expertise. By transferring the due diligence review to the EAB, states free up staff time to focus on other projects or work CEs toward closing. Transferring due diligence review to the centralized EAB can streamline the process, because EAB staffers are experts in due diligence review, and are entirely focused on review procedures. However, clear distinction of roles is needed to ensure that state-level easement work is not duplicated by EAB.

Workshop participants heard different perspectives on EAB. One state serviced by the EAB has seen a great deal of success. Another state is not serviced by the EAB and is concerned about several shortcomings of the EAB and maintains that it will not seek service from the EAB. Finally, participants heard from a state that used to be serviced by the EAB but is no longer because of several major concerns about the function of the EAB. The state currently serviced by the EAB appreciates the additional capacity afforded by the EAB and the expertise and stability it provides, which is difficult to maintain at a state NRCS level. In states where it is difficult to hire or maintain NRCS staff for the long term, the EAB can offer stability that would not be possible if the state NRCS office was acting alone.

Alternatively, the EAB does not report to State Conservationists, so it is more difficult for states to request accelerated reviews. When realty specialists are maintained at the state NRCS office, the State Conservationist can direct the focus of the realty specialists and ask the specialists to prioritize certain projects or acquisition work as needs arise. Further, because EAB is housed at NHQ, the EAB staff may not be familiar with the context in the specific area where the CE project is located, including realty issues unique to western states. This lack of context may lead EAB staff to misconstrue or require more guidance on certain aspects of the due diligence. Some states will not seek service by the EAB because of the concern with the lack of supervision that affords the state office and local context.

In all, participants learned about the pros and cons of service by the EAB. Participants noted that they need to keep in mind – with or without service by the EAB – there will always be a degree of review and process that must flow through NHQ.

### Directing the focus of the NRCS state offices

Participants learned about the State Conservationists' role in directing the focus of state offices, weighing priorities among important programs, and allocating limited resources to where they believe they will have the greatest impact, including ACEP-ALE. State Conservationists have the flexibility to set the state's focus areas and program priorities. This

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To improve the pace and scale of conservation, state conservationists and state staff need to be on the same page as land trusts. That will require effort from both land trusts and State Conservationists. ”



can include actions like hiring additional easement support staff or conducting outreach to field office staff on the role of ACEP-ALE. When State Conservationists direct staff capacity and focus toward ACEP-ALE, it can help increase the pace and scale of conservation. Further, State Conservationists have discretion to pursue partner positions and to seek service by the EAB. A key insight from the workshop was the recognition that State Conservationists are critical to the successful implementation of ACEP-ALE.

## PROCESS

In preliminary interviews, interviewees identified Process as the second primary area of improvement for ACEP-ALE. Following the interviews, facilitators gleaned several specific action items which could improve processes of ACEP-ALE. For purposes of the workshop, the facilitators defined Process as anything at the state NRCS or land trust level which could improve one or more of the steps in moving a CE from application to closing.

1. Certified Entities
2. Treatment of Applications
3. Phase 1 ESA
4. Appraisals

### Certified Entities

Entity certification is a process that was included in the 2008 Farm Bill. Land trusts that meet certain qualifications can apply to the NRCS to be certified. Once certified, those land trusts can rely on their own due diligence review and reduce duplicative NRCS review of certain due diligence items prior to closing the CE. Additionally, funding agreements for certified entities are for 5-7 years instead of 3-5 years. The extended life of funding agreements prevents a need to request extensions for projects that go longer than the funding agreement, saving staff time for both NRCS and land trust staff. By reducing due diligence review requirements, the process of closing a CE is streamlined and the timeline is significantly shortened. By extending the lifetime of the funding agreements, land trusts and state NRCS offices have less of a burden to renew funding agreements every three years. At the time of the workshop, only 9 land trusts nationwide had been NRCS certified.<sup>4</sup>

Participants heard from state NRCS offices that work with both certified and non-certified land trusts. Participants also heard

“ State NRCS offices, in addition to land trusts, see the process benefits to entity certification. One state reports that certified entities can close CEs an average of 2 months faster than non-certified entities. ”

<sup>4</sup> In January, 2023 alone, three new land trusts received certification.

perspectives from land trusts that have been certified as well as those that have opted not to seek certification.

There are two primary concerns for land trusts with the certified entity program in its current form. First, the process of getting certified is onerous and vague. Land trusts are unclear of what is expected of them or how to go about becoming certified. Further, even those land trusts that are qualified to become certified may experience other technical hold ups that prevent them from achieving certification. Second, land trusts are expected to carry a significant amount of risk which is often unworkable for them. The way certification is specified in the rules and the program manual, any violations of the funding agreement or deed terms could result in the land trust being liable to the NRCS for the full value of the CE, plus penalties and interest.<sup>5</sup> In the current form, all violations, no matter how minor, are treated equally and can potentially result in corrective action that is disproportionate to the violation. Those land trusts that have been certified have had to find ways to mitigate their risks of violations and corrective actions. Risk avoidance can include practices like creating a conservation easement template that is agreed to by both the NRCS and the land trust.



Participants also learned about the Land Trust Alliance (LTA) accreditation process. This is a process that land trusts can go through to demonstrate their commitment to diligent conservation practices. Only land trusts that demonstrate that they meet all of the LTA's stringent requirements can become accredited. In the statutory authority for the certified entity process, the accreditation of a land trust by the LTA may be considered in determining whether to certify the land trust.<sup>6</sup> Land trusts believe that the LTA accreditation process is highly rigorous and any additional requirements for NRCS certification should be minimal and specific to NRCS program applications (i.e., number of previous NRCS CEs, etc.). Certification should be seen as a way to confirm that land trusts are familiar with NRCS programs and should not be a way of confirming land trusts meet ethical and operational standards. The Land Trust Accreditation Commission has accredited 450 land trusts since 2007. Since 2014, only nine of those land trusts have been certified by the NRCS.

One additional concern from state NRCS offices is the perceived reduction in due diligence review. Certified land trusts bear the entire burden of ensuring that due diligence is complete and accurate, thus removing NRCS from the review process. Some NRCS staff believe it is beneficial to conduct an additional round of due diligence review and are concerned that some things might be missed, putting the land trust or easement transaction at risk. Land trusts should be aware that although certification can increase the speed at which projects close, any modifications to the easement before closing will result in significant delays, despite certification. Land trusts can work with landowners early and often to minimize the chances of modifications.

<sup>5</sup> Title 440 CPM 528.70 Subpart H.

<sup>6</sup> 16 U.S.C. § 58 VII.

Participants from land trusts and state NRCS offices see the benefits to the certified entity program. The reduction in due diligence review and increased timeline of funding agreements reduces the burden for both land trusts and state NRCS offices. While this results in direct benefits to state offices, there are collateral benefits realized by Internal Controls and EAB that are more difficult to quantify, but worth noting. The certified entity program allows for increased speed and efficiency without the need to create additional capacity at the state NRCS level. However, fulfilling the full potential of the certified entity program requires greater access for more land trusts to become certified and addressing the financial risks to land trusts, especially for more minor deed or funding agreement violations. Other ways the NRCS could improve the certified entity process could include better defining the process and expectations for certification, allocating funding to or hiring additional national staff to support states as they attempt to certify their land trusts partners, and more explicitly recognizing or expanding the role of LTA Accreditation when considering certification. The NRCS could also work to encourage accredited land trusts to seek certification through advertising, direct outreach, or training opportunities.

### Treatment of Applications

Generally, when a land trust or NRCS state office receives applications for CE projects, they will focus on the highest ranked projects, or those projects most likely to receive funding. Then, if the state NRCS office wants to request additional funding it will have to improve the lower-ranked applications to ensure consistent quality between the higher and lower ranked projects. Then, if one of the higher ranked projects drops out or cannot close when expected, lower-ranked projects that have not been treated as if they will receive funding are not ready to pursue funding. By treating all applications as if they will be funded, land trusts and NRCS can quickly move lower-ranked projects forward in the application process. This streamlines the application and funding process and ensures that the state NRCS office can request additional funding without the need for reworking lower ranked applications. Treating all applications as if they will be funded will require additional staff capacity at both land trust and state NRCS levels.

The key takeaway for participants was that if NRCS and land trusts treat every easement application as if it will be funded it creates long term value and allows for both to be able to adapt to changes quicker and more effectively. By treating all applications as if they will be funded, the state NRCS office and land trusts can react efficiently when more money comes to the state. There are downsides to treating all applications as if they will be funded, and NRCS offices need to carefully consider the risks and benefits of this practice and the impact it may have on their operations or their land trust partners. This practice requires diligent communications to manage expectations and ensure understanding of which projects are moving forward and why. One state saw success with treating all applications as if they will be funded, but this practice may not work in every state.

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Treating all applications as if they will be funded creates flexibility for state NRCS offices and land trusts, allowing them to quickly adapt to change.”

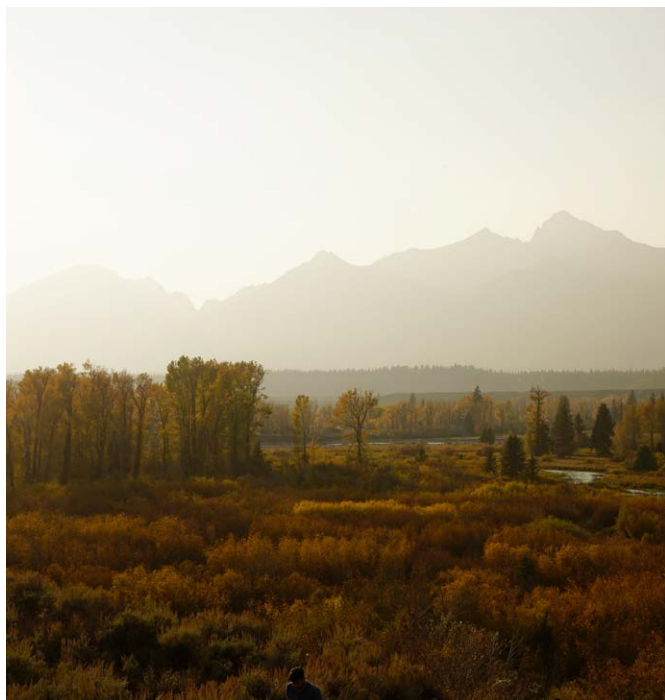
## Phase 1 ESA

The Conservation Program Manual requires that the NRCS complete a version of a phase 1 environmental site assessment (ESA) for every ACEP-ALE project. In cases where land trusts prepare a phase 1 ESA, the NRCS should be able to rely on this work without the need for added site visits or due diligence. If the land trust does not complete a phase 1 ESA the NRCS will still be required to complete the assessment.

## Appraisals

Currently, the effective date of an ACEP-ALE appraisal must be within 6 months of the ALE agreement date or 12 months of the easement closing date. There are different timelines for different appraisal methodologies (Treasury and Yellowbook). Appraisals that are completed within 6 months of the ALE agreement are “locked in” and the 12-month rule does not apply. Once an appraisal is complete, numerous reviews must be completed including those conducted by the land trust, landowner, and non-federal funding partner(s); then the NRCS will review the appraisal at the state office, through a technical reviewer, and, for CEs valued at over \$1 million, by a national appraiser. At the time of the workshop, there was only one national appraisal reviewer. These multiple reviews can create significant bottlenecks, especially if revisions are needed. In addition, the NRCS review can take up to 30 days for the technical review and 90 days for the National Appraiser review. Under the 12 month rule, by the time the review is complete, the appraisal may have expired and either an appraisal update or a new appraisal is required.

Another lesson shared with participants is that land trusts should work with their NRCS state offices to determine the appropriate time and sequencing to order the appraisal. If land trusts order the appraisal too early (e.g., before all terms of the CE are fully negotiated), changes in the easement terms can require an update to the appraisal and subsequent reviews. This creates delays in closing and redundant requests of appraisers to update appraisals, and triggers additional appraisal reviews. Recommending that the easement terms be negotiated before ordering the appraisal would alleviate some of the pressures on appraisers, which are already in high demand with limited time. However, constraints from other funding partners may require different timing requirements for the appraisal, which create additional practical difficulty. Statutory changes to the appraisal process are required to address these concerns.



## OTHER TOPICS OF DISCUSSION

In addition to the two primary areas of improvement for ACEP-ALE, there were three other topics that participants deemed as critically important. Because these topics are not necessarily related to ACEP-ALE, we include them separately, but do not intend to diminish their importance.

1. Regional Conservation Partnership Program
2. Climate Implications of the Inflation Reduction Act
3. Support for Low Income or Historically Underserved Landowners

### Regional Conservation Partnership Program (RCPP)

The Regional Conservation Partnership Program (RCPP) was initially authorized in the 2014 Farm Bill.<sup>7</sup> The program combines multiple NRCS programs and awards funding to regional priority areas through a primary partnering organization. Due to the nature of regional priority areas, RCPP can be incredibly valuable for prioritizing projects and areas with regional needs that do not rank high enough for other programs. Further, the comprehensive nature of the programs offered through RCPP can create value in conserving as well as improving the resource conditions of regionally specific priority areas. RCPP was awarded significant additional funding through the IRA.<sup>8</sup> To move the money into CEs, land trusts need to partner with NRCS state offices to apply to the RCPP. RCPP becomes difficult when applications and projects cross state lines and incorporate multiple programs. Keeping applications simple (e.g., aimed at only programs essential to addressing specific resource goals) and limited in geographic scope can increase the likelihood of funding and make long-term management of the grant more manageable.

RCPP was intended to create significant investment in comprehensive conservation. However, there are certain aspects of the program that make it unwieldy and it has proven to be less efficient at closing CEs than traditional ACEP-ALE. Though RCPP was intended to give funding to a number of different NRCS programs, if land trusts focus their applications on a specific program and certain geography, the overhead and administration of the RCPP grant becomes more manageable. When land trusts are completing their application for RCPP, they should also be aware of the overhead and administration costs of the grant. In the grant, the land trust can and should include costs for some NRCS overhead and management. The land trust will need to work with the State Conservationist to determine the appropriate amount to include. Although not discussed in the workshop, another consideration related to RCPP is the treatment of grasslands of special significance (GSS). Under ACEP-ALE, GSS projects can receive up to 75% of the CE value from the NRCS,

“RCPP can create new priorities for funding, allowing NRCS money to flow to areas that would otherwise be less competitive in traditional programs.”

<sup>7</sup> Nat. Res. Conservation Serv., U.S. Dep't of Agric., Administration and Status of the Regional Conservation Partnership Program: 2019 Report to Congress

<sup>8</sup> Jim Monke, Cong. Rsch. Serv., IN119878, Inflation Reduction Act: Agricultural Conservation and Credit, Renewable Energy, and Forestry (2022), <https://crsreports.congress.gov/product/pdf/IN/IN11978>.

compared to only 50% without the GSS designation. RCPP does not recognize GSS, so NRCS contributions under RCPP are limited to 50%. The NRCS could consider incorporating GSS into RCPP.

State Conservationists, though they have less control over RCPP than ACEP-ALE, still need to be kept in the loop on RCPP applications. State NRCS staff have to provide oversight to the RCPP application and implementation but receive fewer benefits for working on RCPP than for working on ACEP-ALE. If land trusts are considering an RCPP application, they should speak with their State Conservationist prior to applying to the program and work with their state NRCS office throughout the process.

### Climate Implications of the Inflation Reduction Act (IRA)

The IRA allocates substantial funding to NRCS's conservation programs including ACEP-ALE and RCPP. The funding through the IRA must, however, be granted "...for easements or interests in land that will most reduce, capture, avoid, or sequester carbon dioxide, methane, or nitrous oxide emissions associated with land..." This means that land trusts and state NRCS offices need to be prepared to make the case that land conservation has greenhouse gas sequestration benefits. Science-focused conservation partners like joint ventures and universities can help provide the scientific evidence needed to make the argument for IRA funds.

The climate mitigation aspect of the IRA money may have impacts on land trusts considering other mitigation or ecosystem service markets. As a result, there may be issues with additionality that make the project ineligible for those other types of projects.<sup>9</sup>

### Low Income or Historically Underserved Landowners

The costs and time associated with completing a CE are significant. Many landowners cannot justify the upfront investment required to get a CE from application to closing. This holds especially true for those low income or historically underserved landowners who could significantly benefit from the financial benefits of a CE but may be priced out of ACEP-ALE projects. The cost and time to close a CE are higher for NRCS-funded CEs because of the additional due diligence required. This has major implications for land in areas with large populations of low income or historically underserved landowners. In some areas, these low income or historically underserved landowners can control much of the land base, but are "land rich, cash poor," making the transaction and legal costs infeasible.

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Land trusts and NRCS state offices need to be ready to make the argument that conserving land has climate mitigation benefits. ”

<sup>9</sup> Additionality is the concept that in order for a project to be eligible for payments from climate or carbon markets, the project must have restrictions above and beyond what is considered business-as-usual. Therefore, any project that is already legally obligated to provide climate benefits cannot enter the climate market because any additional restrictions placed on the project would not be additional to already-existing restrictions.

## Action Items Arising from the Workshop

A primary focus of the workshop was to identify concrete, tangible action items that land trusts and state NRCS offices can begin working on immediately. One of the overarching themes of the workshop was to find ways for land trusts and state NRCS offices to continue to build on their already-existing strong relationships of trust. These relationships are critical to the successful implementation of ACEP-ALE and RCPP. Another overarching theme of the workshop was the incredible role that State Conservationists can play in setting priorities for their state and implementing ACEP-ALE and RCPP. Participants may have identified other action items that they will focus on in their own contexts. Here, we highlight action items participants saw as most impactful, within the control of participants, and/or areas for targeted outreach to others. We divide the action items into four categories based on whether the action item is related to the implementation of ACEP-ALE, will require statutory or rulemaking changes, and whether it addresses Capacity or Process issues.



### IMPLEMENTATION ACTION ITEMS

Implementation relates to putting ACEP-ALE to work on the ground. These are action items that state NRCS offices, land trusts, and partners can begin to work on immediately. Implementation action items do not require statutory, policy, or rulemaking changes.

#### Implementation Action Items—Capacity

##### Partner Positions

If land trusts or state NRCS offices are interested in developing a partner position in their state, they should work with the NRCS office, State Conservationist, and potential funding partners early. Funding partners, such as the National Fish and Wildlife Foundation, might be able to help partially fund partner positions and may have prior experience structuring similar positions and agreements.

States with partner positions can work to share their experiences. This could take the form of workshops / webinars, or in more tangible ways, such as sharing operating or funding agreements. Sharing of experiences can help socialize the concept to state NRCS offices, as well as funders. Leaving the workshop, several land trust partners plan to pursue partner positions in their states and were in discussions with a funding partner about upcoming granting opportunities.

##### Directing the focus of the NRCS state offices

Land trusts need to be willing to work cooperatively with the NRCS to make the case that ACEP-ALE should be a major priority of the state office. From this, State Conservationists can decide how easements fit among priorities in their state, and begin moving resources and focus toward ACEP-ALE. These actions can include educational events with state office and field office staff, and hiring ALE coordinators.

## Implementation Action Items—Process

### **Certified Entities**

Land trusts and state NRCS offices that have experience with certified entities can put on a workshop or webinar highlighting their experiences. The sharing of information from NRCS offices could help NRCS state offices quantify the costs/benefits of certification and decide whether to encourage their land trust partners to pursue certification.

Additionally, NRCS offices could work to create a fact sheet or informational packet on the program. There is limited information available from the NRCS regarding certification. Many land trusts are unsure of where to start, or what the benefits are of certification. Clear factsheets from the NRCS could help land trusts make informed decisions.

## Implementation Action Items—Other

### **Appraisals**

All partners could work to include more appraisers/appraisal groups in these discussions. The national shortage of appraisers has significant consequences for conservation and the ACEP-ALE program. By working on outreach to appraisers, partners could share the benefits of CEs and encourage more appraisers to seek to become qualified to appraise CEs.

### **Low Income or Historically Underserved Landowners**

Land trusts that serve low income or historically underserved landowners could work with the NRCS and funding partners to produce ways to help these landowners access easement funding. This could include a deferred payment program, or the creation of a fund to allow landowners to access capital to pay for their due diligence.

### **IRA**

The Ruckelshaus Institute, IWJV, and other partners could work to create fact sheets or other information on the climate benefits of land conservation. The IRA allocates money to those CE projects that result in greenhouse gas sequestration benefits. Other partners with research capacity could work to substantiate the greenhouse gas benefits of land conservation, so that land trusts and NRCS offices can access IRA funds allocated to ACEP-ALE.

## **STATUTORY, RULEMAKING, AND POLICY MANUAL ACTION ITEMS**

Statutory rulemaking, or policy manual action items are those action items that can only be addressed through the Farm Bill, rulemaking process, or policy manual updates. State NRCS offices and land trusts cannot change statutes, rules or the policy manual without significant higher-level changes.

### **Statutory, Rulemaking, and Policy Manual Action Items—Capacity**

#### **EAB**

Several state NRCS offices could work together to create a “regional EAB” or shared realty specialist staff. This could reduce some of the concerns that NRCS offices have with the current structure of



the EAB, while still maintaining the benefit of dedicated easement review staff. This will likely require approval through a rulemaking process or from a Regional Conservationist. The states working toward this regional goal would need to create operating agreements and determine how to fund the position. Regional shared positions are common across NRCS offices in other circumstances. This model is being explored in Arizona, Nevada, and Utah.

## Statutory, Rulemaking, and Policy Manual Action Items—Process

### Certified Entity Program

NRCS, land trusts, and the LTA could work toward an MOU or other agreement, wherein accredited land trusts receive accelerated or automatic certification by the NRCS once they meet certain requirements. Currently, LTA-accredited land trusts still need to apply for certification from the NRCS, and work through the process the same as other land trusts. The LTA accreditation process is rigorous and requires a great deal of commitment from land trusts. The NRCS need not overly burden itself when there is already a body that ensures the thoroughness of land trusts' operations. Land trusts and the NRCS can work with the LTA's accreditation commission to determine the best way to certify accredited land trusts. In working with the LTA's Accreditation Commission, the Commission and the NRCS could implement outreach efforts to encourage land trusts that already have 10 closed NRCS CEs to seek certification. Further, the NRCS could consider streamlining the application so that those land trusts with 10 closed NRCS CEs could receive accelerated certification.

In addition, interested parties could work through statute or rulemaking to make the certification program less risky to land trusts. This could include a tiered system of violations with commensurate penalties, rather than treating every violation the same.

Finally, rulemaking could allow for already certified entities to sponsor other land trusts that are interested in certification. This would reduce the oversight burden on the NRCS and would allow for land trusts that otherwise might have to wait several years to achieve certification much quicker. The NRCS already has the capability to recognize sponsoring entities.

## Statutory, Rulemaking, and Policy Manual Action Items—Other

### Appraisals

Through statutory updates, the appraisal process could be altered to allow for the appraisal value to be confirmed at the date of appraisal, if subsequently approved by all participating entities. Currently, the appraisal is conducted, then must be reviewed, and approved within 12 months of closing. If the appraised value is not approved within 12 months of closing, it must be amended or a new appraisal provided. An update to the statute could allow the appraised value, as determined in the first appraisal, to be the final value for which the landowner receives compensation, if subsequently approved by all participating parties regardless of whether it is



within 12 months of closing. This would reduce the burden created by the 12-month shelf life on appraisals. The NRCS does allow appraisals within 6 months of the ALE agreement, but this is often too early in the CE acquisition process to be useful because it is at a time when the land trust has just learned the project is being funded. It takes substantial time to hire and schedule an appraiser, so this window is easy to miss.

Statutory and rulemaking changes could alter the threshold to trigger a national appraisal review. The current threshold is \$1 million, and a majority of CEs surpass this value. The statute could be updated to increase the value to a more appropriate number given the growth in land values and to reflect inflation overtime. Another option is the statute could be updated so that national appraisal review is only triggered when the NRCS's contribution meets a certain dollar threshold or percent contribution, not simply when the total value of the CE appraisal exceeds \$1 million. This would still protect NRCS, and encourage land trusts to seek additional funding partners, while still reducing the number of CEs that must be reviewed by the national appraiser when NRCS might play a minor role in funding the CE. In addition, the NRCS could consider eliminating the technical review requirement for CEs that require a national appraiser review. This two-part review as currently structured is confusing to NRCS partners, especially when an NRCS technical reviewer approves the appraisal, and the national reviewer does not. The work of the technical reviewer can be completed by the national appraiser as part of a single review.



### **RCPP**

Through statutory and rulemaking updates, partners could find ways to streamline RCPP. One way could be to make RCPP and ALE more similar by allowing for certified entities and making the due diligence requirements similar between the programs. This would allow land trusts and NRCS staff to streamline applications and reduce errors or inconsistencies.

### **Low Income or Historically Underserved Landowners**

NRCS, land trusts and other partners could work on ways to better serve low income or historically underserved landowners. This could be through better implementation of programs, but statutory or rulemaking changes could also lead to the creation of a fund to help pay for some or all of the due diligence and transaction costs of these landowners. All improvements to the application process would make ACEP-ALE easier to access for all landowners and would significantly benefit low income or historically underserved landowners. Statutory changes could also reduce the due diligence burden on landowners and the time required to close CEs, which would in turn reduce the financial burdens on low income/historically underserved landowners.

## Conclusion and Next Steps

We thank all the participants for their investment of time and energy in making the workshop a productive discussion. At the conclusion of the workshop, a majority of the participants expressed their interest in continuing the efforts and discussions. Several participants suggested making the workshop an annual event to support learning among states and dialogue between NRCS state offices and land trusts. We will engage participants in developing the scope of potential future workshops. We encourage participants to work over the next year to implement strategies outlined in the workshop and share updates on progress. Ultimately, the success of the workshop depends on its tangible impact on conservation and we feel implementation of the identified strategies will help increase the pace and scale of agricultural land conservation.

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## Additional Resources

- The [Certified Entity Factsheet](#) was created by Washington NRCS, and contains general background information on the certified entity program in that state.
- The [IWJV Public Comment on IRA](#) was written broadly to help IWJV's partners when they provided public comment to the NRCS on the implementation of IRA funds. Page 7 includes the discussion on ACEP-ALE.
- The [LTA Accreditation Requirements Manual](#) outlines all of the requirements land trusts must meet in order to be accredited.
- [LTA Land Trust Standards & Practices](#) is part of the accreditation process, but is more generalized than the requirements manual.
- The [PORT Letter to the NRCS](#) was written by the Partnership of Rangeland Trusts and a few other land trusts, outlining frustrations and potential solutions to ACEP-ALE and RCPP.