



2024 Agricultural Land Easements Workshop

Rising to the Challenge: Recommended Actions

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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

WORKSHOP OVERVIEW

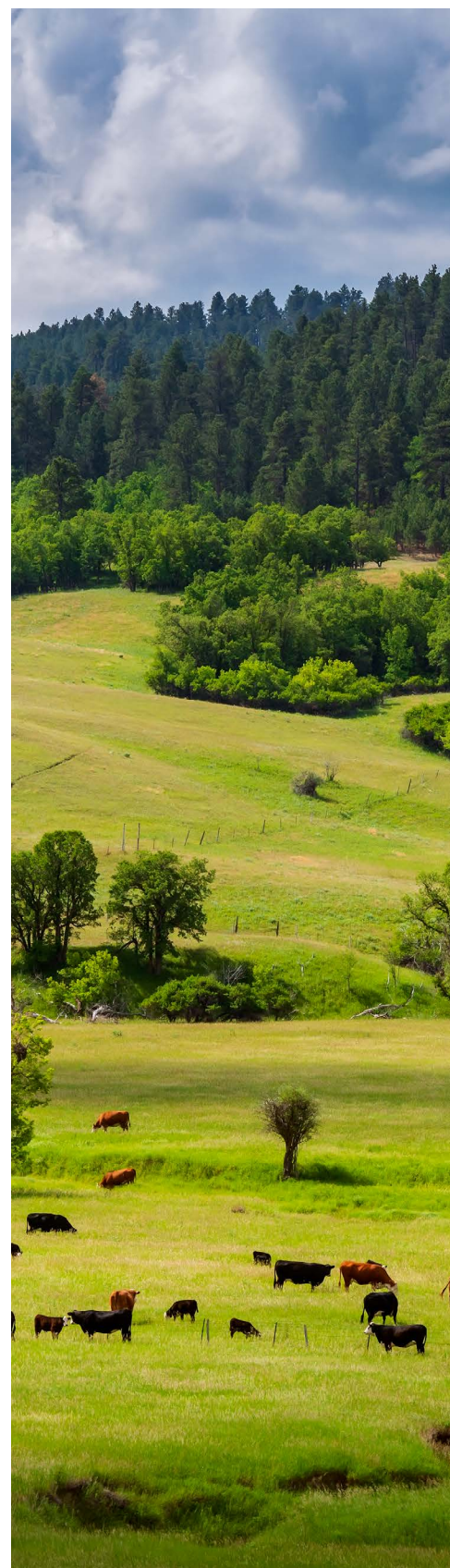
Conversion of agricultural land is rapidly altering western landscapes. Conservation easements are a primary tool for maintaining private agricultural lands and their associated conservation values like providing wildlife habitat and maintaining migration corridors for big game. The USDA Natural Resource Conservation Service (NRCS) Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE) and the Regional Conservation Partnership Program (RCPP) are the largest sources of federal funding for conservation easements and are critical to agricultural land conservation across the country. However, the pace of ACEP-ALE and RCPP implementation is not meeting the current demand for conservation easements.

The Intermountain West Joint Venture (IWJV) and the University of Wyoming's Ruckelshaus Institute jointly hosted the 2024 Agricultural Land Easement Workshop to collaboratively identify specific strategies to increase the pace and scale of ACEP-ALE and RCPP implementation to meet landowner demand and the challenges facing working agricultural lands. Building off of a successful 2023 ACEP-ALE workshop, the workshop convened a small group that included western NRCS State Conservationists, other state NRCS staff, land trust leaders, and partners with an interest in the success of these programs. Participants were invited based on their direct experience with ACEP-ALE and RCPP in the West, expertise in a particular area of interest for the workshop, and willingness to work collaboratively with the group to find actionable solutions.

Here, we highlight recommended actions emerging from the results of those conversations with the intent to spur tangible actions by land trusts, NRCS state offices, and others, to increase the pace and scale of ACEP-ALE and RCPP implementation. Recommendations are not necessarily endorsed by all participating individuals and organizations. The IWJV and the Ruckelshaus Institute acknowledge that ACEP-ALE and RCPP are administered based on a complex range of policies, rules, regulations, and statutes and we may not have a full understanding of the nuances and complexities governing these programs. We are also aware of concerted efforts on behalf of NRCS to actively implement changes to improve its programs for partners and agricultural landowners. We greatly appreciate their responsiveness in this endeavor.

RECOMMENDED ACTIONS FROM THE WORKSHOP

The Inflation Reduction Act provides NRCS with nearly \$20 billion in additional conservation program funding to obligate between FY22 and FY26. This presents unprecedented opportunities and challenges that require NRCS to think and act in ways that recognize and support the effectiveness of the state offices and on-the-ground partners. The action items below are thoughtful and actionable recommendations based on input from land trusts, NRCS State Conservationists, state easement specialists, and



policy experts from land trust organizations. Further collaboration among these entities and NRCS will ensure the successful implementation of easements through NRCS Programs.

- Enhance opportunities with historically underserved landowners by: maximizing the federal share that will contribute to the fair market value of an easement, identifying funding sources to fund due diligence costs, and providing enhanced technical assistance funding on RCPP easement projects for support to land trusts working with historically underserved producers.
- Create consistency in payment rates and deed terms for easements under ACEP-ALE, RCPP, and RCPP Alternate Funding Arrangements (AFA).
- Expand the scope of ACEP-ALE technical assistance funds to strategically build land trust capacity to facilitate high-quality applications that reduce NRCS administrative workload and increase implementation efficiency.
- Allow IRA-funded easements to follow the existing ACEP-ALE acquisition processes at the state level.
- Use a Job Approval Authority-style approach to allow states with proven skills and experience to administer easements and perform basic administrative actions.
- Identify NRCS funds that can support due diligence costs.
- Allow entity certification under ACEP-ALE to extend to easement projects under RCPP. (DONE)
- Ensure Buy Protect Sell (BPS) works as intended.

THE POWER OF PARTNERSHIPS

NRCS is the largest federal funder of conservation easements. The successful implementation of NRCS-funded conservation easements has the potential to be the largest driver in ensuring the nexus of agriculture and habitat is maintained in perpetuity in the western landscape. However, NRCS cannot do this work alone. There is a network of partners across the West that are excited, interested, capable, and ready to help put NRCS easement funding to work. Success requires both NRCS support of and collaboration with these NGO, state, tribal, and federal partners. The items below are actionable ways NRCS can enhance its collaboration with partner entities across the West.

- Recognize the various ways that partners bring value to, leverage, and implement NRCS programs (e.g., through shared positions, promoting NRCS programs, working with landowners to access easements, and by holding and monitoring easements in perpetuity) without creating unattainable financial burdens on partner operations.
- Engage partners to ensure intended improvements to policy and programs have the intended benefits on the ground.
- Leverage partnership networks within states to increase the impact and importance of NRCS funds on the western landscape.

For additional information or to be connected to individual partners with questions, please contact Joy Morris, the IWJV's Conservation Programs and Operations Coordinator: joy.morris@iwjv.org, (775)722-6624.

I. Workshop Overview

Exurban development and associated fragmentation is rapidly altering western landscapes. Conservation easements are a primary tool for maintaining intact private agricultural lands and their associated conservation values like providing wildlife habitat and maintaining migration corridors for big game. 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 conservation easements and is critical to agricultural land conservation across the country.¹ However, the pace of ACEP-ALE implementation is not meeting the demand for conservation easements, is insufficient for addressing large-scale land conversion, and is unlikely to be able to fully administer the substantial influx of funding in coming years.

In 2022, western land trusts estimated a backlog of 400,000 acres worth of conservation easements while the NRCS worked through 200 easements that were enrolled in ACEP-ALE but had not yet closed.² This slow rate of implementing ACEP-ALE may impede ensuring that \$1.4 billion of Inflation Reduction Act (IRA) money appropriated to ACEP-ALE will have the desired on-the-ground impact.³ Another conservation tool administered by NRCS is the Regional Conservation Partnership Program (RCPP), which seeks to fund regional and watershed-scale conservation projects using various methods, including implementing conservation easements. However, land trusts and other organizations face challenges working on RCPP projects as well, due to similarly slow administrative processes.

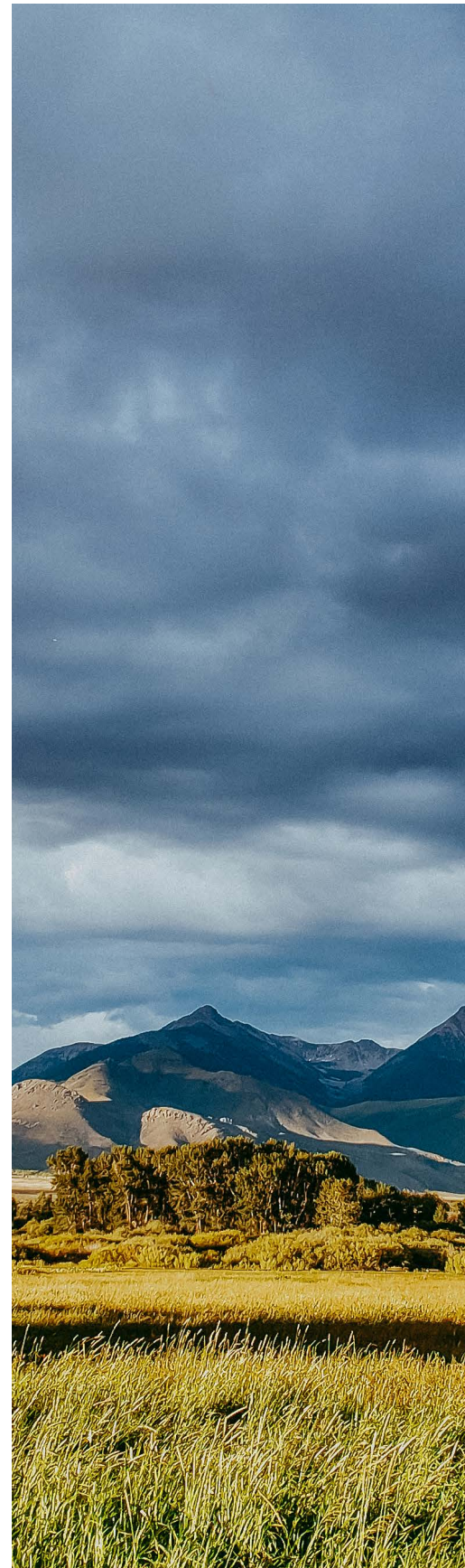
NRCS has worked diligently to identify opportunities to scale up its workforce and partnerships to utilize funding from the 2022 Inflation Reduction Act (IRA). Two years into the IRA funding, much has been accomplished; however, NRCS needs to continue to identify every opportunity that can accelerate program implementation without sacrificing program efficacy. Although IRA funding is temporary, it creates an excellent opportunity for the agency to reflect on its future goals and take initiative to drive success. Further, it is possible that IRA funds could be included as a permanent baseline in the next Farm Bill, thereby sustaining a high level of annual ACEP-ALE funding in the future.

The Intermountain West Joint Venture (IWJV) and the University of Wyoming's Ruckelshaus Institute built off of a successful 2023 ACEP-ALE workshop to jointly host the 2024 Agricultural Land Easement Workshop to collaboratively identify specific strategies to increase the pace and scale of ACEP-ALE and RCPP implementation to meet landowner demand and address challenges facing working agricultural lands. Invited participants included western NRCS State

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>.



Conservationists, other state NRCS staff, land trust leaders, and other relevant entities. Participants were selected based on their direct experience with ACEP-ALE and RCPP in the West, expertise in a particular area of interest and willingness to work collaboratively to find workable solutions.

The 2024 workshop benefited from momentum gained during the 2023 edition, with participants engaging constructively with each other, sharing new insights, and building on the positive impacts from the previous year. Facilitators had participants share their expertise on specific topics to kick start conversations and highlight specific action items and suggestions to foster co-learning and collaboration around the implementation of ACEP-ALE and RCPP.

We elevate the results of those conversations in this summary and intend for these insights to spur tangible actions by NRCS, land trusts, and others to increase the pace and scale of ACEP-ALE and RCPP 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. The authors of this report also acknowledge that ACEP-ALE and RCPP are administered based on a complex range of policies, rules, regulations, and statutes; we may not fully understand the nuances and complexities governing these programs. We also acknowledge NRCS' concerted efforts to actively implement changes to improve programs for agricultural landowners and their land trust partners, and we greatly appreciate the responsiveness of NRCS leadership in this endeavor.



II. Accelerating the Pace and Scale of ACEP-ALE Easement Acquisition

In May 2023 (immediately following the first Ruckleshaus/IWJV ACEP-ALE workshop), Chief Cosby took two steps to streamline ACEP ALE:

- ✓ **"Appraisals for ALE:** The threshold for the national review of ALE appraisals is now \$3 million, raised from \$1 million. NRCS raised the threshold to align program requirements with increased land values, enabling the agency to target staff resources more effectively, as well as speed up implementation. Appraisals help ensure the cost-effective and appropriate use of federal funds that are contributed to a conservation partner for purchasing the ALE from the farmer or rancher.
- ✓ **Certification of Entities for ALE:** For ALE, NRCS works with eligible entities, such as American Indian tribes, state and local governments, and non-governmental organizations, to conserve prime farmland and at-risk grasslands. NRCS is working to expand the number of entities by launching a certification initiative to proactively notify potentially eligible entities that they qualify for administrative flexibilities. Certified entities have greater independence and less oversight in purchasing easements funded under ALE. Information for entities on how to get certified is available on the ALE webpage." NRCS has greatly expanded the number of certified entities over the last year, a true mark of success.

These first steps show how much discretion and authority the NRCS office has to improve processes through adding, revising, or removing policies.

Building on this momentum, the 2024 workshop produced the following recommendations outlined below.

- ✓ **Enhance opportunities with historically underserved landowners by: maximizing the federal share that will contribute to the fair market value of an easement, identifying funding sources to fund due diligence costs, and providing enhanced technical assistance funding on RCPP easement projects for support to land trusts working with historically underserved producers.**

NRCS is working to increase access and funding to historically underserved producers. This was reflected in the 2024 RCPP Notice of Funding Opportunity. NRCS continues to look for ways to increase the percent of appraised value that can be paid to historically underserved producers. In addition to the current effort being made, NRCS is encouraged to explore funding sources that could cover due diligence costs for historically underserved producers. Even with recent payment increases to historically underserved producers, due diligence costs remain a limiting factor for these producers to access easement programs.

In many cases, it is impossible for historically underserved producers and the land trusts that serve them to cover due diligence costs. To follow the intent of completing easements with these producers, NRCS needs to identify sources of funding that can be used for due diligence costs. Many other federal programs pay for due diligence costs, including the U.S. Fish and Wildlife Service's North American Waterfowl Conservation Act grants and Department of Defense Readiness Environmental Protection Integration funds.

NRCS should also create enhanced technical assistance to cover aspects of land trust outreach and application preparation, recognizing the complicated nature of this work requires a significant additional level of effort, especially when bringing programs to new participants.

- ✓ **Create consistency in payment rates and deed terms for easements under ACEP-ALE, RCPP, and RCPP Alternate Funding Arrangements (AFA).**

There are currently different percent thresholds for the fair market value of an easement that can be paid for through different NRCS programs. This disincentivizes easements from being enrolled under certain programs like RCPP and RCPP AFA. Creating threshold equity across programs increases opportunities for easements to be part of larger efforts, especially RCPP and RCPP AFA. For example, the NRCS cost-share for ACEP-ALE Grasslands of Special Significance (GSS) easements involving non-historically underserved producers is 75%. The NRCS cost-share for the same entity-held easement on the same land with the same producer through RCPP Classic is only 50%. This inequity works against RCPP being a funding tool to protect the Nation's most important grasslands.

There should not be a disincentive to use one program over another.



- ✓ Expand the scope of ACEP-ALE technical assistance funds to strategically build land trust capacity to facilitate high-quality applications that reduce NRCS administrative workload and increase implementation efficiency.

Non-governmental partners cannot implement NRCS programs at scale without financial support for these organizations to be reimbursed for programmatic work. Programmatic work includes vetting and creating solid landowner applications. NRCS has reported that when there is increased capacity to implement the applications, they receive better applications that are strategic, more informed, and the land trusts are better prepared to take on the work of a conservation easement. RCPP rules have been expanded to allow more flexibility under enhanced technical assistance; doing the same under ACEP-ALE is advised.



- ✓ Allow IRA-funded easements to follow the existing ACEP-ALE acquisition processes at the state level.

Requiring easements funded through IRA to be routed through the Easement Program Division (EPD) creates an additional workload for EPD staff. IRA-funded easements should follow the same process as standard easements.

- ✓ Use a Job Approval Authority-style approach to allow states with proven skills and experience to administer easements and perform basic administrative actions.

Significant easement authority was previously delegated to State Conservationists and state easement specialty staff. This proved highly effective for easement administration. Issues related to the administration of easements in 2013⁴ resulted in a decade of redundancy and increased review between the EPD and state easement specialists. This has resulted in a disconnect between local knowledge and decision making and a loss of efficiency in the implementation of easements. This also reduces EPD staff availability to focus on larger policy issues and large-scale easement needs.

Easements require local knowledge and awareness for informed decision making and effective easement administration. This could be created using an approach like Job Approval Authority (JAA) for easement due diligence at the easement practitioner level. Providing such a structure would mitigate risk and ensure states are empowered to effectively and efficiently administer easements with the highest integrity. JAA would complement NRCS Certified Entity approval (e.g., if a state has completed 10 Internal Control Reviews [ICRs], that state should have the authority to complete ICRs at the state level).

The states should also have the authority, responsibility, and accountability to administer easements. This would allow states to make decisions and move through the easement process effectively. Allowing basic administrative actions (e.g., moving building envelopes, subordination, any right-of-way/road change, etc.) at the state level allows for decision-making informed by local knowledge. This would also provide time for EPD staff to work on

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<https://usdaoig.oversight.gov/sites/default/files/reports/2022-03/10099-0001-31.pdf>

other issues (e.g. the removal of acres, major infractions, etc.) and to stay current on policies. In addition, this is an opportunity for EPD to train states on processes like deed review.

See Appendix A for additional information on how a JAA-style approach to administration could work.

✓ Identify NRCS funds that can support due diligence costs.

There is only so much fundraising land trusts can do for due diligence costs, especially in historically underserved areas. Land trusts will be unable to raise the funding for due diligence costs to match the \$1.4 billion in ACEP-ALE IRA (nor the \$4 billion in IRA RCPP) in the allotted time frame. Several other federally funded programs fund due diligence costs with federal funds, like the U.S. Fish and Wildlife Service's North American Waterfowl Conservation Act grants and Department of Defense Readiness Environmental Protection Integration funds.

With ACEP-ALE, funds cannot be used due to statute limitations. However, NRCS should consider other ways to pay for due diligence costs. These costs continually limit the ability of historically underserved producers to access easement programs, even with some of the recent language improvements in RCPP regarding payment increases to historically underserved producers (see above).

It is important to note that NRCS already pays for due diligence costs for Wetland Reserve Easements (WRE). WREs are held by the NRCS in perpetuity and are more expensive for NRCS to manage than easements held by a land trust. Land trusts are specifically established and accredited to maintain easements in perpetuity. Due diligence costs are part of the cost of doing business.

With RCPP, we do not believe that the RCPP statute nor program rules and regulations mention due diligence costs; both include language that could be interpreted as in direct conflict with requiring due diligence costs to be covered by a land trust:

*From Managers Report: The Managers' intent behind allowing flexibility and additional options in the non-federal share of cost-share assistance (matching funds) is to broaden the ability of entities to participate in ALE, including for grasslands of special environmental significance, across a more diverse geography. The intention of the language is to provide better access to the program to states where farm and ranchland preservation funding is not readily available like South Dakota, Texas, and Alabama. **The Managers do not believe the program should be limited only to entities that can provide cash match.** It is important to acknowledge other expenses that an entity must take on, such as the long-term expense of monitoring an easement or other additional upfront costs. The Managers believe that the long-term strength of the program is derived from making the program available as broadly and equitably as possible across diverse regions of the country. The Managers do not intend for USDA to reject cash match entirely but to broaden the options available to eligible entities. - Joint Explanatory Statement of the Committee of Conference*

✓ Allow entity certification under ACEP-ALE to extend to easement projects under RCPP. (DONE)

This recommendation was recently completed by NRCS. This action is a great example of the agency's ability to be nimble in streamlining processes without losing program integrity. See Improvements to the Regional Conservation Partnership Program.

✓ **Ensure Buy Protect Sell (BPS) works as intended.**

The 2018 Farm Bill was a step in the right direction, enabling BPS transactions that provide opportunities for those who have trouble accessing farmland. However, for these transactions to work effectively, the language needs to be refined to clarify the primary purposes of BPS, clarify eligible lands, and establish realistic timelines for enrollment. Workshop participants flagged issues that are preventing effective implementation. Given the limited time in the workshop to work through the complexity of BPS, a set of partners formed a BPS Working Group. This working group has met several times and will develop a set of detailed recommendations that will complement this report.



Empowering Partnerships

Partnerships are integral to the work and success of NRCS. Land trusts and other partners create shared staff positions, promote NRCS programs, work with landowners to develop easements, and hold and monitor easements in perpetuity, among other supportive actions. NRCS must acknowledge these local partnerships and their deep understanding of local geographies and people, as invaluable to the success of NRCS easement programs. Recommend actions:

✓ **Engage partners to ensure changes to policy and programs have the intended benefits on the ground.**

It takes effort, trust, and collaboration to make NRCS programs successful. Stakeholder input in program and policy decision-making enhances the trust between NRCS and partner organizations, leading to more effective implementation of NRCS programs. Engaging partners will help NRCS think on the macro scale when looking at programmatic improvements and better identify where policies can be streamlined. Furthermore, increasing the number of ways in which NRCS can lean on its own state offices and partner organizations will empower effective, locally focused work. These things take dialogue and engagement that comes from discussion and is not often captured through soliciting public comments.

✓ **Leverage partnership networks within states to increase the impact and use of NRCS funds in the West.**

There is immense scrutiny on how IRA funds are spent, especially in western states. NRCS needs support to tell the story of how these funds are making an impact on the ground. Leaning into science and communications support provided by other partners can help inform strategic decision-making; it can also help tell the story of how NRCS funds are leveraged for maximum conservation effectiveness.

Conclusion

Although this document recommends several technical fixes, the ultimate path to increased success of program implementation lies in relationships. Creating a culture of trust among NRCS National Headquarters, NRCS state offices, and partners is fundamental to successfully implementing NRCS programs. There are a number of ways to build those relationships, many of which are outlined above. In addition, agency use of JAA for easements could create more independence for state offices that demonstrate their capabilities; similarly, enabling states to handle IRA-funded ACEP-ALE and RCPP easements would take a burden of work off the EPD, allowing it to focus on other pressing tasks. These solutions are essential to getting conservation funding on the ground and improving NRCS efficacy across the region.

In addition, an NRCS review of the RCPP and ACEP-ALE manuals to remove language that results in barriers to landowner and entity participation would be a highly effective alternative to creating additional policies that are intended to make programs work better. This type of endeavor in a workshop framework that allows external partners to provide input could prove highly effective.

There is a growing team of willing partners who are highly invested in helping NRCS meet the needs of agricultural producers in conserving their lands in perpetuity for future generations using ACEP-ALE and RCPP. These partners want to collaborate with NRCS to support the agency in conservation easement implementation that protects vitally important agricultural lands for a wide range of ecosystem services and strengthens rural communities.



Workshop Participant List

Aaron Field, Director of Private Lands Conservation, Theodore Roosevelt Conservation Partnership
Alex Few, Regional Director, Park County Open Lands, Jackson Hole Land Trust
Alyssa Rolan, Communications Director, California Rangeland Trust
Amy Beatie, Executive Director, Keep it Colorado
Ben Sinnamon, Conservation Transaction Specialist, The Nature Conservancy
Brad Hansen, Eastern Manager, Montana Land Reliance
Brian Ohs, Montana Association of Land Trusts ACEP-ALE Easement Liaison, Montana Association of Land Trusts
Cecilia Rosacker, Executive Director, Rio Grande Agricultural Land Trust
Chad Ellis, Chief Executive Officer, Texas Agricultural Land Trust
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Tom Watson, State Conservationist, NRCS Montana
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