



## **Land Conservation for the 21<sup>st</sup> Century** *Doing More with Less*

### *Executive Summary*

#### **The Opportunity: Doing More with Less**

In a time when public funds are scarce and in great demand, *Land Conservation for the 21<sup>st</sup> Century* offers a new conservation strategy that **does more with less**. The 112<sup>th</sup> Congress will have an unprecedented opportunity to benefit working family farmers and ranchers and advance private land conservation through legislation championed, and ultimately approved by Congress.

#### **PORT's Federal Policy Priorities:**

- **Pass legislation making the conservation easement incentive permanent.**  
In December 2010, Congress renewed the enhanced tax incentive for conservation easement donations through December 31, 2011 and retroactive to January 1, 2010. This tax deduction has helped PORT members work with farmers, ranchers and other modest-income landowners to increase the pace of conservation. Bills to make the incentive permanent have been introduced. Representatives can become original co-sponsors of the Conservation Easement Incentive Act by contacting Rep. Jim Gerlach (R-PA) or Rep. Mike Thompson (D-CA). Senators can co-sponsor the Rural Heritage Conservation Act, S. 339, introduced by Senators Max Baucus (D-MT) and Charles Grassley (R-IA).
- **Reauthorize and reform the Grassland Reserve Program and Farm and Ranchland Protection Program during the 2012 Farm Bill consideration.**  
The Grassland Reserve Program (GRP) and Farm and Ranchland Protection Program (FRPP) allow private land trusts to leverage their expertise and experience to conserve private working lands by providing up to 50% of the appraised value for the purchase of perpetual conservation easements. The current requirement of 25% cash match is unnecessary and is limiting the use of FRPP and GRP for many landowners and private land trusts. If a landowner (grantor) is willing to donate 50% of the value of a conservation easement, PORT contends GRP and FRPP funding should be available to purchase the remaining 50%.
- **Estate Tax Reform.**  
Because farm and ranch assets consist mainly of land, buildings, and specialized equipment, these estates may look wealthy on paper, but they include few saleable assets and little liquidity to pay estate taxes. Completely abolishing the estate tax would eliminate one of the leading causes of the breakup of multigenerational family farms and ranches.
- **Land and Water Conservation Fund (LWCF).**  
If LWCF is reauthorized, PORT believes it should be appropriate for land trusts to access this program to purchase conservation easements on private lands.

#### **Who is PORT?**

*PORT is an alliance of 7 state-wide ranching land trusts that have close and strong affiliations with their state livestock associations. Rangeland trusts of California, Colorado, Kansas, Montana, Oregon, Texas and Wyoming are PORT members. PORT was formed to increase the impact that its members could have on national land conservation policy, represent the needs of working rangelands within America's broader land trust community, and enhance the sharing of information and expertise. PORT member land trusts collectively hold and administer over 1,100 conservation easements on more than 1.7 million acres.*



## **Land Conservation for the 21<sup>st</sup> Century**

### ***Doing More with Less***

*(Board Unanimously Approved, 12-11-10)*

#### **Iconic Lands, Extraordinary People**

Essential to America's great landscapes and the people, economies and wildlife that depend on them are critically situated, privately owned lands. These are lands of significant and under-rated value for public resources that supply essential services and benefits to citizens across the nation. These are the watersheds that store drinking water for America's cities; these are the essential winter ranges and migratory habitats for game species from ducks to deer; these are the meadows and fields that grow food and offer national food security; these are the open lands that buffer streams and rivers carrying water and nutrients for commerce, recreation and agriculture; that raise beef, sheep and wildlife; that are the majestic views; the rolling hills and temperate bottomlands that support the natural and economic health of our nation.

The private lands of America -- particularly in the West and High Plains -- link the blocks of public land into iconic, productive landscapes, and are lifelines for species migration. They are the necessary pieces of the puzzle that matter economically, culturally, aesthetically and scientifically to America's future. Development of critically situated, privately owned lands will irreversibly fragment and impact the American landscape and compromise its collective resources.

#### **The Partnership of Rangeland Trusts (PORT)**

The Partnership of Rangeland Trusts (PORT) is an association of seven (7) statewide, agriculturally oriented land trusts in California, Colorado, Kansas, Montana, Oregon, Texas and Wyoming. PORT member land trusts have a proven record of assisting agricultural landowners, who voluntarily assign perpetual conservation easements on their working landscapes and agriculturally productive ranches. Conservation easements permanently retire development rights to protect natural resources and habitats while allowing continued sustainable farming, ranching and forestry.

PORT members collectively hold and administer over 1,100 conservation easements encompassing more than 1.7 million acres. These perpetual legal agreements, which "run with the land", help preserve the defining landscapes in our states and permanently protect lands that provide significant value to the public...generating food and fiber, providing wildlife habitat, cradling the headwaters of our most important river systems, sequestering carbon, enhancing water quality, and nurturing a distinctly American way of life for thousands of families while benefiting millions of residents and visitors to these states.

## **The Opportunity: Doing More with Less**

The 112<sup>th</sup> Congress will have an unprecedented opportunity to benefit working family farmers and ranchers and advance private land conservation through legislation championed and, ultimately approved, by this Congress in the areas of tax reform, agriculture, land conservation, and energy.

In a time when public funds are scarce and in great demand, *Land Conservation for the 21<sup>st</sup> Century*, presents a new conservation strategy that **does more with less**. This proposal advances a theme of private initiative for conservation, partnership (public and private), shared stewardship (individual and governmental), and creativity and innovation (efficient tools used flexibly for greater impact).

PORT's members recognize that money must be saved and be well spent, that the private sector has and can continue to be excellent stewards, and that private enterprise and conservation can and must work hand in hand. This proposal rewards excellence in private conservation management of private lands and collaborative management of private and public lands for landscape-scale conservation. It is a proposal for a new century that will, by necessity, require smaller government control, leverage limited federal funds, and result in greater conservation outcomes.

*Two related philosophies are strongly espoused by PORT and its members.*

On behalf of the states in which we live and work, PORT submits that the conservation of private ranch and farm lands is the most effective and efficient use of limited federal funds for land conservation.

- The cost of a permanent conservation easement is about a third of the cost of outright fee purchase and is often far less expensive, particularly when negotiated by a community-based, local land trust. These conservation easements are perpetual, so a federal investment for this purpose assures the protection of open spaces for future generations.
- Management of conserved private lands continues at the direction and expense of the private landowner, not the federal government.
- Assurance of landowner compliance with the terms of the conservation easement is overseen by - and at the expense of - qualified conservation organizations, avoiding added burden and expense to federal agencies. Furthermore, local land trusts are comprised of professional staff and volunteer boards familiar with the customs and needs of their communities.

## **PORT's Federal Policy Priorities**

- **Make the temporary federal income tax incentive for qualified conservation easement donations permanent.**

This landmark legislation has resulted in more than 525,000 new acres placed under conservation easement, especially on working family farms and ranches throughout the west and across the country. By providing cost-effective tax benefits for modest-income landowners, including family ranchers and farmers, to donate a conservation easement, family lands can stay intact, in the family and in agricultural production and continue to provide priceless ecosystem services. Since 2006, the enhanced tax incentive has allowed family farmers, ranchers, and

other moderate-income landowners to get a significant tax benefit for donating a conservation easement on their land.

The enhanced incentive helps landowners choose conservation by:

- Raising the maximum deduction a donor can take for donating a conservation easement from **30%** of their adjusted gross income (AGI) in any year to **50%**;
- Allowing qualified farmers and ranchers to deduct up to **100%** of their AGI; and
- Increasing the number of years over which a donor can take deductions from 6 to **16 years**.

Without the enhanced easement incentive, an agricultural landowner earning \$50,000 a year who donated a conservation easement worth \$1 million could take a total of no more than \$90,000 in tax deductions. Under the enhanced incentive, that landowner can take as much as \$800,000 in tax deductions – still less than the full value of their donation, but a significant increase.

The enhanced conservation easement tax incentive opened the door to voluntary, landowner-led conservation on millions of acres of important, but unprotected wildlife habitat, scenic open space and agriculturally productive lands across the country. Donating development rights to land – often a farm or ranch family's most valuable asset – requires careful planning and consideration. It often takes years from the initial conversations with a landowner before a conservation easement is executed. Landowners considering a perpetual commitment of their land should not be pressured by an artificial deadline, and many will never begin the process without the reassurance of a permanent incentive.

**Despite strong support from both parties in Congress, the incentive expired in 2009. On December 17, 2010, Congress extended it until the end of 2011.**

- **Reauthorize the Farm Bill in 2012, including a strengthened, well-funded conservation title.**

As the 112<sup>th</sup> Congress considers modifications to the Conservation Title of the 2012 Farm Bill, PORT specifically suggests the following:

- **GRP and FRPP should be reauthorized and appropriately funded.**  
PORT members are sensitive to budget constraints and a desire by lawmakers to control federal spending. We contend that conservation dollars devoted to perpetual conservation easements helps secure food and fiber and is a good investment for future generations of farmers and ranchers. Furthermore, participation in these conservation programs preserves our nation's open spaces, which benefit our natural resources and quality of life.
- **Determination of eligible entities.**  
As NRCS develops requirements for designating land trusts as qualified entities, PORT suggests the criteria closely mirrors the Internal Revenue Service's requirements and currently accepted industry standards. While it's essential that NRCS determine which entities are capable of holding and administering conservation easements purchased with federal funds, PORT believes NRCS should recognize there are several "young" agricultural land

trusts who are respected and trusted by the agricultural landowner community and committed to quality, ethical, and professional standards.

- **Eliminate the requirement (or statute interpretation) that eligible entities, in their role as grantees, must provide a minimum 25% cash match when accessing GRP and FRPP funds for purchasing conservation easements.**

The current requirement of 25% cash match is unnecessary and is limiting the use of FRPP and GRP for many landowners and private land trusts. State and/or private funds for conservation easement acquisitions are limited or not available in many states with extensive grassland resources. If a landowner (grantor) is willing to donate 50% of the value of a conservation easement, PORT contends GRP and FRPP funding should be available to purchase the remaining 50%. Before accessing GRP and FRPP funds, these entities agree to conduct the expensive and time-consuming due diligence to prepare the application for closing and agree to monitor, administer, and enforce the GRP or FRPP funded conservation easement for perpetuity. This modification would allow additional leveraging of GRP funds because in many states the only viable option for landowners is to apply for 100% GRP funding, with local NRCS offices doing 100% of the conservation easement transaction procedures.

- **GRP requirement for grazing or conservation plan.**

PORT members have determined that most landowners interested in forfeiting their development rights with a conservation easement are concerned about future governance of management activities. This is compounded by the fact that these easements are perpetual agreements. Conservation plans may be appropriate with the term rental contracts (10, 15, or 20 year contracts), but not advisable for perpetual conservation easements. PORT contends the GRP conservation easement valuation (payment) is determined by the value of development rights being severed from the property. In other words, the GRP payment is a reimbursement for buying the development rights and not an incentive payment to manage their property in a manner prescribed by federal officials on a perpetual basis. PORT contends that such expectations should more appropriately be addressed in a separate short term management plan that can be layered on top of these permanent documents and be revised or renewed after a period of time. If conservation or management plans are required for GRP participants, PORT suggests that such plans be treated as a separate document from the easement deed and mutually agreed to by NRCS and the grantor prior to closing of the easement deed transaction.

- **Allow FRPP and GRP funds for transaction costs.**

PORT members have experienced significant costs for completing conservation easement transactions. These costs include payments for certified appraisals, surveys, environmental assessments, title searches, geologist reports, and legal fees. It's important to note that NRCS is using GRP appropriated funds for these transactional expenses when landowners apply directly to NRCS for GRP conservation easements. PORT suggests it is appropriate to allow qualified private land trusts to utilize a small portion of GRP and FRPP resources for these costs, especially if the landowner (grantor) offers to donate a portion of their conservation easement value in a bargain sale.

- **Refine appraisal/valuation process for GRP.**

PORT suggests the most appropriate method of determining the valuation of conservation easements for NRCS funded purchase is to mirror the requirements for a qualified conservation contribution pursuant to section 170(h) of the Internal Revenue Code. This change would provide consistency for determining fair market value and allow the donor (grantor) to claim an income tax deduction for bargain sales that are partially purchased with GRP dollars. (The 2008 Farm Bill made such a change for FRPP, which mirrors other federal programs.) Currently the GRP statute, as amended in the 2008 Farm Bill, states the “Secretary shall make easement payments in an amount not to exceed the fair market value of the land less the grazing value of the land encumbered by the easement.” In addition, the new law directs the Secretary to pay no more than the value determined by an appraisal meeting the Uniform Standards of Professional Appraisal Practices; or a value as determined by an area-wide market analysis or survey, unless an offer by a landowner is less than the market analysis or survey.

PORT suggests the GRP valuation or payment determination provision should omit the reference to “less the grazing value” and be consistent with the valuation provision of FRPP.

- **Contingent right of enforcement for GRP and FRPP easements.**

An August 21, 2009 amendment and clarification to the January 21, 2009 interim final rule for GRP clarified that a contingent right of enforcement in an easement purchased, owned, and written by a non-Federal entity is not a federal acquisition of a real property. A similar correction was made in the July 2, 2009 interim final rule for FRPP. PORT supports this interpretation and suggests this position continue during the GRP and FRPP reauthorization process of the next farm bill.

- **Reform the federal estate tax to benefit working lands, agricultural families and those who have permanently conserved their lands.**

**The estate tax disproportionately hits agriculture.** Ninety-six percent of American farms and ranches are owned and operated by families. Because farm and ranch assets consist mainly of land, buildings, and specialized equipment, these estates may look wealthy on paper, but they include few saleable assets and little liquidity to pay estate taxes. Completely abolishing the estate tax would eliminate one of the leading causes of the breakup of multigenerational family farms and ranches.

The Economic Research Service of the US Department of Agriculture estimates that fully 10% of commercial farms (those selling more than \$250,000 a year of agricultural products) will be affected by the estate tax at its 2009 level. This 10% figure is expected to exponentially increase, if meaningful estate tax reform is not enacted prior to December 31, 2010. On Jan. 1, 2011, the estate tax reverts back to its draconian pre-2001 levels of 55 percent on farm estates worth \$1 million, unless beneficial reforms to agricultural landowners and private land conservation are enacted immediately.

This potentially dire situation is exacerbated where residential, commercial, or industrial development is the most profitable use of land – areas where conversion of agricultural and forest lands to other uses continues, even on the most productive lands. According to the Natural Resources Inventory of the USDA, we have been losing 1.4 million productive acres a year to pay estate taxes.

Congress has long provided incentives in the estate tax for the donation of conservation easements to protect important natural resources for the benefit of the public. **IRC 2055(f)** allows the value of a donated conservation easement to be excluded from taxable estate. Donating a conservation easement means a landowner will not pay estate taxes on valuable development rights they have agreed to retire. **IRC 2031(c)** provides an estate tax exclusion of up to 40% of the remainder value of land protected by a donated conservation easement. That exclusion is capped at \$500,000 and is further reduced if the easement reduces a property's value by less than 30%. These sections have made conservation easement donations an important consideration in estate planning for many agricultural and forest landowners.

If repeal of the estate tax is not politically feasible, PORT supports legislative efforts to reform the estate tax that will:

- increase the exemption to at least \$5 million per person,
- lower the tax rate to 35%;
- defer payment of estate taxes on agricultural land that remains productive and in the family, and
- increase the exclusion for lands subject to a perpetual conservation easement (IRC 2031 (c)) from a maximum of 40% of the remainder value of the land under easement to 50%, and from a maximum of \$500,000 to \$5 million, in recognition of increased land values.

These reforms would provide a powerful incentive for owners of high-value agricultural and forest lands to keep their lands productive, in the family and perpetually protected by a conservation easement.

- **Allow qualified entities, including land trusts, to access a fully-funded Land and Water Conservation Fund (LWCF) to purchase conservation easements on private lands.**

The LWCF should be expanded to include awarding competitive grants to land conservation organizations to conserve high priority private lands by using conservation easements. Allowing LWCF dollars to be used for private land conservation of working agricultural lands through qualified conservation organizations would expand the opportunities for conservation with public funding and use that funding to stimulate other federal and nonfederal funding for land conservation and generate new, greater public support to champion full funding for the Land and Water Conservation Fund, especially within agricultural and rural communities.